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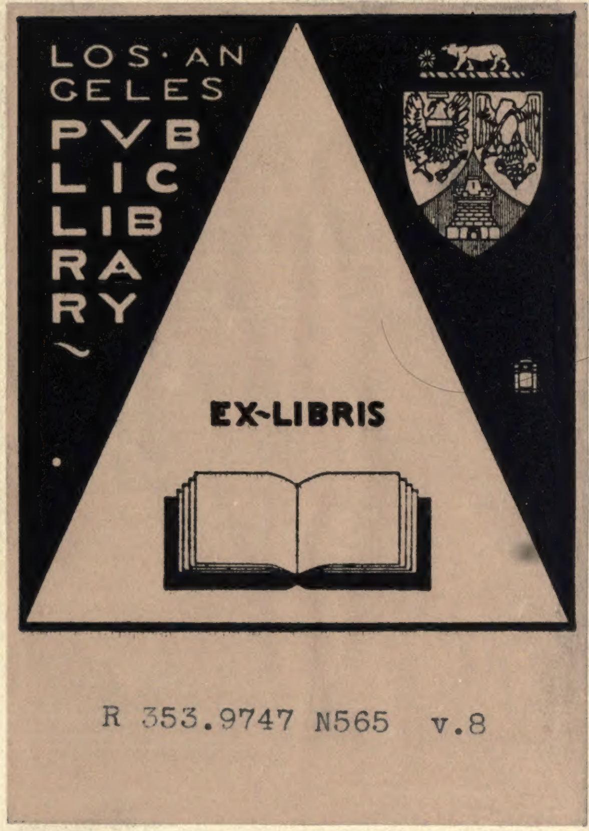

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STATE OF NEW YORK

MESSAGES FROM THE GOVERNORS

COMPRISING

Executive Communications to the Legislature and Other
Papers Relating to Legislation from the Organization
of the First Colonial Assembly in 1683 to
and Including the Year 1906

WITH NOTES

EDITED BY CHARLES Z. LINCOLN

PUBLISHED BY AUTHORITY OF THE STATE

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VOLUME VIII

1885-1891

ALBANY
J. B. LYON COMPANY, STATE PRINTERS
1909

Entered, according to Act of Congress, in the year nineteen hundred and nine,

BY SAMUEL S. KOENIG, SECRETARY OF THE STATE OF NEW YORK,

In trust for the benefit of the People of the said State, in the office of the Librarian of Congress, at Washington, D. C.

PREFACE.

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Governor Hill's seven years fill the eighth volume. The Governor and the Legislature were not in political accord, and there were frequent differences of opinion between them on public questions. The enumeration act of 1885 was vetoed by the Governor, and an extraordinary session called in the same year to consider this subject resulted in another disagreement between the Legislature and the Governor. There was a similar disagreement on the question of a constitutional convention which was ordered by the people in 1886. The differences between the Governor and the Legislature relative to the proper structure of a convention fully appear in the messages and other documents.

The question of labor in prisons received serious consideration during this period, and an act on this subject was passed at the extraordinary session in 1888. Ballot reform, excise legislation, and a change in the method of inflicting the death penalty received consideration during this period, resulting in the enactment of statutes relating to these subjects. The volume also contains notes on the centennial celebration of the adoption of the Federal Constitution and the inauguration of President Washington, and judicial aid in legislation.

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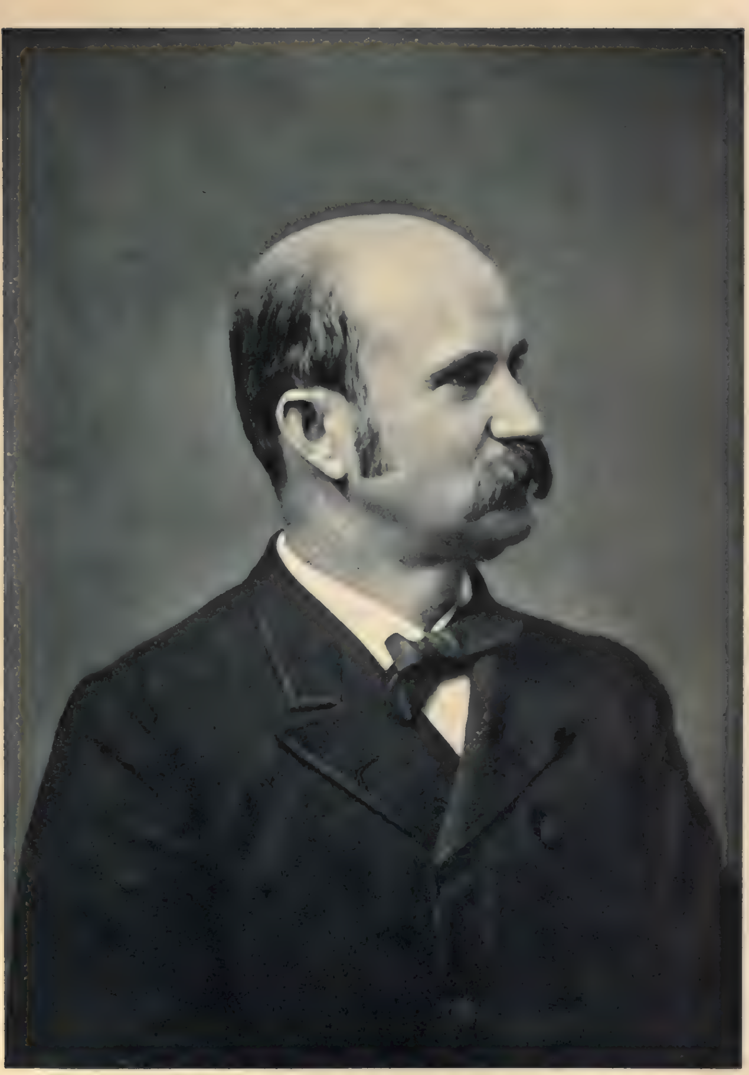

David B. Hill

MESSAGES FROM THE GOVERNOR.

1885. JANUARY 6. LEGISLATURE, ONE HUNDRED AND EIGHTH SESSION.

DAVID B. HILL, Governor.

Grover Cleveland, then Governor of New York, was chosen President of the United States at the general election held on the 4th day of November, 1884. On the 6th of January, 1885, at the opening of the session of the Legislature, Mr. Cleveland resigned the office of Governor. On the same day, David B. Hill, Lieutenant-Governor, took the oath of office as Governor and assumed the duties of that office.

January 6. Governor Hill sent to the Legislature the following:

ANNUAL MESSAGE.

STATE OF NEW YORK:

Executive Chamber,
Albany, *January* 6, 1885.

To the Legislature.— The election of Grover Cleveland to the Presidency of the United States having occasioned his resignation as Governor, it became the duty of the Lieutenant-Governor, under the Constitution of our State [a] and established precedent, to assume the office of Governor.

That duty I have this day undertaken.

Deeply impressed with a due sense of the responsibilities of the important public trust which has devolved upon me,

---

[a] Const. 1846, art. 4, § 6.

I indulge in the hope that by the blessing of God I may be able to discharge its duties so as to meet the approval of my fellow-citizens and advance the interests of the State.

I am not unmindful of the embarrassments which surround me.

The fact is realized that neither branch of the Legislature is in political accord with the Executive, but this circumstance ought not necessarily to prevent a harmonious, patriotic and united effort to give to the whole people the blessings of a pure, economical and wisely administered government, conducted on business principles.

Your aid and co-operation is earnestly invoked in the mutual endeavor to sink partisan differences and harmonize conflicting interests in our joint labors in behalf of the promotion of good government and the highest interests of the people.

By the Constitution the Executive is required "to communicate by message to the Legislature, at every session, the condition of the State, and to recommend such matters to them as he shall judge expedient."[b]

I proceed to discharge this duty.

It should be stated at the outset that there having been created from time to time so many new and different departments and commissions pertaining to the State government, it becomes almost impossible within the proper limits of an annual message to fully set forth their condition, management, or the work accomplished by them, or even briefly to allude to many of them.

A single glance at their number sufficiently attests this fact.

In addition to the regular departments, the heads of which are elected by the people, there are the following:

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[b] Const. 1846, art. 4, § 4.

The Departments of Banks, Insurance, Public Instruction, State Prisons, Public Works, Railroads, Board of Claims, Bureau of Labor Statistics, Civil Service Commission, State Board of Charities, State Board of Assessors, the Military Department, Regents of the University, New Capitol Commission, Quarantine Department, Commissioners of State Reservation at Niagara, Commissioners of Emigration, Trustees of Public Buildings, State Board of Health, the State Dairy Commissioner, the State Commissioner in Lunacy, the Superintendent of Salt Springs, the Superintendent of the Adirondack Survey, the Board of Commissioners of the State Survey, and some others, all of which make annual reports to the Legislature, besides several temporary commissions which make special reports.

The omission, therefore, to particularly mention many of such departments or commissions is not to be construed into any lack of appreciation of their importance, their usefulness or the ability with which they are severally conducted, but is occasioned solely by the necessity of curtailing this communication; and where some of them are especially referred to, it is in such cases not deemed essential or advisable, save in a few instances, to aggregate much detailed information or many figures or statistics pertaining to them, even at the risk of this course being regarded as an innovation on the usual custom.

In a short time there will be transmitted to you by the heads of the various departments, their annual reports, and by several existing commissions their special reports, all containing full and detailed information of the situation, conduct and workings of their respective bureaus, with such recommendations as they desire to present, and to such reports the Legislature and the public are respectfully referred.

CONDITION OF THE STATE.

While the country at large has been for some time suffering under a general depression of trade, and our own State has shared in the universal stagnation of business, yet, in many respects, its material welfare has not been seriously affected or disturbed.

It is believed that in the near future there will be a revival of public confidence and a consequent restoration of prosperity.

The public finances are in a satisfactory condition.

The total debt of the State has been reduced to $4,399,018.02, and the amount of taxes received by the Treasurer from corporations alone during the past fiscal year was $1,603,612.75.

The tax rate fixed by the last Legislature of 2 23-40 mills on each dollar will raise on the present State valuation of $3,014,591,372 the sum of $7,762,572.78 for the needs of government.

During the past year valuable progress has been made in all that concerns the material interests of the State, both in legislation and in administration.

Its sanitary condition has been improved.

Its public schools have been increased in efficiency and usefulness.

Its charities have been liberally but discreetly dispensed.

Deception in sales of dairy products has been prevented by statute, and a State department in the interest of dairymen has been created.

Extravagant salaries for public officials have been reduced.

A State Board of Pharmacy has been provided.

The interests of agriculture have been fostered.

Additional rights have been conferred on married women.

An effort for the improvement of tenement-houses has been inaugurated.

Responsibility in the municipal government of the city of New York has been centered to some extent in the mayor.

Child labor by contract in houses of refuge and penitentiaries has been prohibited.

The Civil Service Act has been improved and its provisions extended.

In addition to these marked indications of reform and advancement there are other evidences of successful government.

The burdens of State taxation have been materially reduced.

There have been no serious disturbances of the public peace.

Not an official of the State has been guilty of any defalcation or mal-conduct in office.

There has been no unusual amount of pauperism or crime.

Public order has not been endangered and personal liberty has been everywhere preserved and protected.

The abuses of the past have been greatly remedied.

Labor is respected; the public credit has been maintained; and the standard of official honesty has been raised.

Besides these manifestations of wholesome administration and good government during the year of 1884, your attention was called in the last annual message to the important and salutary work which had been accomplished during the preceding year of 1883, and there is no occasion for its repetition here.

It may be safely asserted that the administration of Governor Cleveland for the two years past has more than met the just expectations of the people, and made its lasting impress on the annals of the State.

It has been brilliant in its sterling integrity, safe in its true conservatism, bold in its efforts for reform, faithful in its adherence to pledges, and vigilant in its opposition to corruption.

Its straightforward and business-like conduct, united with an unquestioned honesty of purpose, has won for it and for himself the warm approval of his political friends, the sincere respect of his opponents, and the unswerving and unselfish support of independent citizens everywhere.

That he may meet with the same degree of success in the greater office to which he has been called, is the earnest wish of all the citizens of this State and of every lover of good government.

BANKS.

Eight new banks have been organized during the year, and two converted from the National to the State system, one closed voluntarily and four failed.

On October 1, 1884, there were nineteen regularly organized trust, loan, mortgage, guaranty and indemnity companies doing business in this State.

It may well be claimed that the time has arrived for considering the expediency of enacting a general law to apply to the formation of trust companies. Their privileges and powers should be uniform and more definitely defined and the authorization to conduct such business should be obtained through the Banking Department and only when the wants and necessities of commercial interests require, and the incorporators should be men of known integrity and business ability. Of recent years the increase in the number of these institutions through legislative enactments has been more rapid than it would seem the interests of legitimate trade and commerce require.

There is considerable complaint that private banks or firms are permitted to transact banking business under corporate names. The list of concerns doing business in such manner is very large.

It would seem that no such institution should be permitted to conduct its business by means of advertisements or otherwise, so as to lead the public to infer that it was in fact a corporation duly organized under the general law and surrounded by all the safeguards which have been the fruit of corrective legislation.

Private banking, like any other legitimate enterprise, should be fostered and encouraged, but where it is sought to be transacted under names which imply a corporate existence, it should be so guarded as to prevent deception.[1]

While this subject is under consideration the Legislature might well go further and determine the expediency of placing all private banks receiving deposits under the inspection and limited authority of the Superintendent of the Banking Department, thereby affording greater protection to the public, who usually implicitly rely upon the solvency of such institutions with little or no knowledge of their actual responsibility.

The law should provide every possible security for the innocent depositor that reasonably can be demanded.[2]

INSURANCE.

Very little needs to be said upon this subject. Under the able management of the present most efficient Superintendent of Insurance the affairs of that department are in a very satisfactory condition.

Nineteen co-operative insurance associations of this State have been incorporated by the Insurance Department, under the provisions of the Co-operative Insurance Law, passed April 2, 1883 (chapter 175, Laws of 1883), and one co-operative association from another State has also complied with the provisions of said act and been admitted to transact business in this State during the past year.

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[1] Chapter 329, passed May 23, which was intended to prevent deception in advertising the business of banking, prohibited a private banker from using a sign or a letterhead, or other device containing words indicating that such place or office was the place or office of a bank.

[2] The banking law, L. 1892, chapter 689, placed individual bankers under the supervision of the banking department, and required them to report to that department.

For decisions sustaining this act see People v. Granite State Provident Asso., (1900) 161 N. Y. 492 (foreign building and loan associations); Hirshfeld v. Bopp, (1895) 145 N. Y. 84 (liability of stockholders); Elmira Sav. Bank v. Davis, (1894) 142 N. Y. 590 (savings banks deposits); Persons v. Gardner, (1899) 42 App. Div. 490, construing L. 1897, chap. 441, amending 1892, chap. 689, sec. 52 (action to enforce stockholders' liability).

During the past ten years co-operative insurance has become one of the most important interests in the State.

It is emphatically the people's insurance, and when honestly managed confers incalculable benefits upon them and their families.

The legislation above referred to, heartily enforced as it has been by the Superintendent, has placed it on a secure basis under State supervision.

That further legislation may be required is probable, and it is to be hoped that the Legislature will not relax its watchful care over this important interest.

STATE PRISONS.

The subject of the employment of prison labor demands the prompt attention of the Legislature.

The recent history of that subject and its present *status* are briefly as follows:

For many years the convicts have been employed under what is known as the contract system — and viewed solely from a pecuniary standpoint it is claimed that the results of that system have been satisfactory to the State.

Whether it has been entirely just to industrial interests outside of the prisons is another and a different question.

The Legislature of 1883 inaugurated the steps which must be regarded as having culminated in the condemnation of that system.

A bill for its abolition passed the Assembly that year, but upon reaching the Senate it encountered fierce opposition, and it was stoutly claimed by the minority who were opposing the measure, that the people would not approve of the proposed abolition, and by reason of such persistent claim it was deemed wise to submit the question to the electors of the State, and accordingly a bill passed both houses and became a law providing for the expression of the opinion of the people of the State upon the subject, and at the annual election of 1883 the people voted upon the question and by a majority of 138,916 votes declared in favor of the abolition of the contract system.

The duty of the Legislature of 1884 was therefore plain. In obedience to the expressed will of the people it should have promptly abolished the system and should have early proceeded to adopt the best possible substitute for it.

It is to be regretted that such duty was not fully performed.

The Legislature at first authorized the appointment of a commission to investigate anew the whole subject of convict labor and to make a report thereon, but distinctly refused to restrict its labors or its report to the simple procurement or recommendation of a substitute for the contract system; and such commission being unable for want of time to complete so vast an undertaking, no distinct report upon the subject was made; and the Legislature finally did pass an act providing that " the Superintendent of State Prisons shall not, nor shall any other authority whatever, renew or extend any existing or pending contract, or make any new contract for the employment of any convicts in any of the prisons, penitentiaries or reformatories within this State;" but it omitted to expressly provide any other system of labor for such institutions, or to provide any means or moneys sufficient for the proper employment of such labor on the expiration of then existing contracts.

In the light of such and other facts, it was seriously disputed whether this act was intended as a permanent abolition of the contract system or only as a temporary expedient.

In December last the hollowware contract, employing two hundred and ten men at Auburn, expired; and by the abandonment last fall of the boot and shoe contract at Auburn prison by the contractors, some one hundred and fifty men were thrown out of employment; and by the failure of the New York State Clothing Company, the entire force of Clinton prison was left idle.

None of these events or contingencies having been provided for by the Legislature, it appears that the Superintendent of State Prisons, under a strained construction of existing statutes, met the emergency by assuming the responsibility of using the usual annual appropriation for maintenance for the purchase of sufficient machinery and materials to employ such convicts in manufacturing on State account, and to a greater or less extent they have been so employed in such manner up to the present time.

It should be stated that next month the axle contract at Auburn Prison, employing two hundred and fifty men, will also expire.

It thus remains for the present Legislature to consider this subject of prison labor at the earliest practicable moment, to the end that some proper system may be adopted and become the permanent policy of the State.

There would seem to be no need of any further commissions to re-investigate the subject.

The Legislature itself is competent to dispose of this question without the necessity of imposing any additional expense upon the taxpayers of the State. The committees on State prisons of the respective houses can readily perfect a measure in the space of two months' time by the exercise of ordinary diligence and attention.

It would greatly aid the solution of the matter if those committees should be composed of intelligent legislators who are not or have not been known champions of the contract system, but those who will bring to the discharge of their important duties strict impartiality, fair business capacity, and a sole desire to subserve the best interests of the State.

Upon the Legislature rests the responsibility of a wise disposition of this question.

It is expected that a movement will be made during the present session for the continuation or restoration of the contract system, and it is understood that the present Superintendent of State Prisons favors that policy of prison management.

Such an effort, it is submitted, should not be encouraged.

In view of the unmistakable sentiment of the people upon the subject, the abolition of the contract system should be regarded as finally settled, and the Legislature should proceed, in entire recognition of that fact, to simply endeavor to provide a suitable and well perfected system to take its place and furnish the necessary means for its operation.

It should be borne in mind that financial considerations alone should not determine the propriety of any system.

While it is very desirable that the prisons of the State should be self-supporting and should not become a burden to the taxpayers, it is likewise important that there should be no attempt to realize a profit from convict labor at the expense and to the injury of outside industrial interests.

The welfare of the mechanics and workingmen of the State should be consulted as well as the demands of the State treasury.

These men pay their proportion of the State taxes and their honest labor should not be embarrassed by injurious competition with convict labor so far as it reasonably can be avoided.

It is not expected nor would it be entirely appropriate that the details of any particular plan proposed for the employment of prison labor should be set forth or urged in this communication. Such procedure might be construed as encroaching on the recognized prerogative of the Legislature itself to provide the specific modes of accomplishing desired results.

It may, however, properly be submitted that in whatever measure may be contemplated by the Legislature, it should not only aim to make our penal institutions self-supporting and to avoid keeping the prisoners in idleness, but care should be taken to provide against unnecessary interference with outside industrial interests.

To prevent such interference was the principal object intended by the people to be accomplished by the abolition of the contract system, and it should not be lost sight of in the framing of a new one.

In this view it is suggested whether it would not be advisable to enact that the trades carried on in our penal institutions should be equalized and diversified by providing that no more than a limited number of convicts should be kept employed in any one branch of business, and that the prison products should not be sold for less than market prices under such reasonable rules and regulations as may be duly prescribed; and in that event it would seem to be requisite that the Superintendent of State Prisons should be invested by statute with a limited supervisory control over the reformatories and penitentiaries (over which he now has no jurisdiction), in order that one recognized head or authority might properly carry out the objects sought to be obtained by such an enactment.

It is believed with confidence that the present Legislature will determine and settle this subject in a satisfactory manner and with a due appreciation of the magnitude of the interests involved.

CANALS.

The amount of business transacted upon the canals, their general condition, management and supervision, compare favorably with recent previous years.

For a number of years no substantial improvements having been made upon the canals, it seemed absolutely necessary that an effort should be made to restore and renew as far as possible the structures of the Erie canal and its banks.

Accordingly with this subject in view the Superintendent of Public Works during the past year has very properly caused skilled mechanics to be employed upon the masonry and woodwork, and twelve new scows, each manned with a crew of good men, have been engaged since June last up to the close of navigation, in the work of raising the banks where they were low, and strengthening them where they were weak, and otherwise proceeding to restore the canal to its original condition, and when this work shall be completed the towing-path will be covered with a heavy coat of gravel from Albany to Buffalo.

The value and efficiency of this work as well as the general satisfactory condition and management of the canals during the past year, has been approved and commended by a committee from the Produce Exchange of New York, who carefully inspected them along their whole line.

The people having heretofore voted to make the canals free, and being resolved to maintain them for the promotion and benefit of the commerce of the State and country, it is clear that they should be preserved in a condition of efficiency and improved in a practical manner as the necessities of business from time to time shall require.[c]

In providing for their maintenance and improvement there should be exercised neither prodigality on the one hand nor parsimony on the other.

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[c] Const. 1846, art. 7, § 3, am. 1882.

NATIONAL GUARD.

The National Guard of our State has never been in a more serviceable and effective condition. Although not increased materially in numbers, it has in many ways been brought to a higher degree of proficiency, the result in a great measure of the tours of duty of nearly the entire Guard at the State camp at Peekskill, the purchase of which, with a suitable and sufficient appropriation for necessary changes and improvements, is earnestly recommended.[3]

The adoption of the new State service uniform by nearly every command in the State has greatly improved the appearance of the Guard, and the practical serviceability of this uniform, besides the manifest benefit of a common dress, has, I think, been satisfactorily demonstrated.

The proper housing of several regiments of the Guard has received attention, and new armories will soon be under way.

The Guard as a whole has grown more efficient, and the State has a system of citizen soldiery on which it may securely and confidently depend.

BOARD OF CLAIMS.

The propriety of the act of 1883, abolishing the Board of Audit and Canal Appraisers, and substituting therefor the present Board of Claims, is now generally admitted.

The latter Board, which possesses all the attributes of a court, is diligently discharging its duties with signal ability and with entire satisfaction to the people of the State.

It has heard upwards of two hundred claims during the past year, and the claims which have come before the Board aggregate upon the general calendar about seven hundred, and those upon the appeal calendar, transferred to it from the Canal Board, about three hundred.

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[3] Camps of instruction for the National Guard were provided for by chapter 118, passed April 9, 1885, which appropriated $30,000 for the purchase of a site and the erection of needed buildings. A site for this purpose was selected at Peekskill.

It is an important tribunal, not only to the State, but to all its citizens. A prosecution before it is the only method by which a citizen can legally enforce his just claim against the sovereign State.

The theory of the law is that the Board stands impartially between the claimants and the State, and that it will exhibit the courage and exercise the discrimination to promptly allow every honest and deserving claim and to reject every unmeritorious and fictitious one. There is every reason to believe from the work accomplished by the Board thus far that it is faithfully fulfilling the beneficent purposes of its creation.

SPRING ELECTIONS.

In the city of New York there are chosen at the general election, certain officers who are connected with the municipal government of the city of New York, and who have no direct relation to the State or county officers elected at the same time.

These officers are twenty-seven in number, namely:

A mayor, who holds his office for two years.

A comptroller, who holds his office for three years.

A president of the board of aldermen, who holds his office for one year, and

Twenty-four aldermen, of whom each holds his office for one year.

Prior to the year 1870 the municipal officers in the city of New York had been chosen, not at the general election, but at what was known as the charter election held for many years in the spring, but more recently in the month of December in each year.

It was found, however, that the December charter election following closely upon the general election of November failed to attract the general attention of voters, and to induce a more general participation it was provided by law in 1870 that the municipal officers might be voted for on the same day of the general election in November for the State and county officers.

Almost immediately the evil of this association was developed in the practical difficulty of relieving the choice of local officers from the influence of strictly partisan politics and of conducting an election for the State or National officers free from the embarrassment of local contests. An opportunity for what is known as "trading" was afforded to working politicians interested in local offices, and the opportunity was not disregarded. The consequences were unjust alike both to the people of the State outside of the city of New York, whose interests were subject to the overwhelming influence of an enormous vote in the city of New York cast largely in consideration of local interests, and to the citizens of that city, whose local contests were embarrassed by the introduction of general issues liable to determine questions with which they were not necessarily connected.

Accordingly, upon the accomplishment of the great reform movement in 1871, the committee of seventy in the new charter which passed through the Legislature of 1872, proposed a return to the ancient system of spring elections for charter officers.

The proposed charter was vetoed by Governor Hoffman, who objected to the provision concerning spring elections chiefly upon the ground that it was proposed to hold them in the month of May, a most unpropitious time, because the then general habit of removal upon the first day of May in each year led to such changes of residence as would disqualify many from voting at an election to be held within thirty days thereafter.*

In the succeeding year, 1873, the present charter of the city was enacted, continuing the practice of choosing the municipal officers at the time of the general election.

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* See ante, vol. 6, p. 453.

In the eleven years that have passed, public opinion both in the city and in the country has strengthened in support of the sentiment, which found expression in the charter of the committee of seventy against a common election of general and local officers at one and the same time.

Common experience has testified to the evil of this system, and the principal if not the only argument for its retention has been that it avoids the expense and the loss of public interest incident upon too great frequency of elections.

Both of these objections would be in large measure removed if it were to be provided by law that the terms of office of all elective municipal officers in the city of New York should be two years, and that such officers should be chosen at a municipal election to be held in the month of April in every alternate year beginning with the year 1887. This would leave undisturbed the terms of all present incumbents, except the Comptroller, whose term expires December 31, 1887. It might be provided that the succeeding term of this office should begin January 1, 1888, and expire April 30, 1889. The terms of office of all other municipal officers chosen in November, 1886, should expire April 30, 1887. The system thus introduced, without injustice to any present incumbent, would be well worth a trial, and would relieve the next presidential election of one element of uncertainty and irritation which has given dissatisfaction to many of the people throughout the State.[4]

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[4] The Constitution of 1894, art. 12, § 3, as a part of the policy of separating municipal elections from State and national elections, required elections in first and second class cities to be held on the general election day in an odd numbered year.

Chapter 826, L. 1895, passed for the purpose of carrying this provision into effect as to New York, regulated the election of various city officers who were by the act to be chosen in odd numbered years. The subject was afterwards included in the Greater New York charter.

THE CIVIL SERVICE.

At the beginning of the last session of the Legislature, the preliminary action had been taken under the act of 1883 to apply the methods of civil service in this State, and also in some cities. The classification of the State service had been made, and the rules prepared and officially promulgated. The report of the State Commission, submitted during the session of the Legislature, gave a detailed account of the work of the Commission, and of the progress made to the date of the report. The new system under the act could not take effect until the 4th day of January, 1884, and then only applied to new appointments to be made after that date. It was inoperative in respect to persons holding positions, except in the matter of promotions.

Important and substantial progress has been made during the time that has since elapsed. By legislative amendments of 1884, it is believed that the statute has been materially improved, and better facilities provided for the work of the Commission. Civil service regulations were also made imperative in all the cities of the State, and were extended to all departments of the municipal government, except the educational. Under the original act, civil service regulations were optional in cities of over fifty thousand inhabitants, being only seven in number, and were restricted, so far as the mayors had authority, to only a small portion of the municipal offices. The mayors of New York, Brooklyn and Buffalo, however, with commendable public spirit, availed themselves of this option, and instituted civil service regulations in their respective cities to the extent of their authority.

The duties imposed upon the State Commission by the amendatory acts of 1884 have been met by the Commissioners with diligence. The classification of the State service has been modified and more positions placed in the competitive schedule. The rules have also been carefully revised and corrected, and the preference given by law to honorably discharged Union soldiers and sailors has been incorporated in the rules.

The appointment and promotion of the large body of public employees in the State service, and in the municipal service, are now no longer subject to the caprice or favoritism of frequently changing officials, but are regulated by impartial, judicious and permanent rules, under which ascertained merit alone is the basis both of appointment and promotion. A reform founded on a principle so just, and which aims to secure good character and efficiency in the public service is worthy of a thorough and patient trial.

The complete results of civil service methods cannot at once be apparent. They can only gradually appear. The foundation of the system has been laid. The evils of the patronage system have been suppressed. The new system is fairly inaugurated, and the instrumentalities for applying it are believed to be judicious and thorough. As in the case of all other reforms, radically changing existing methods, time will be required to disclose by practical experience its advantages and to remove its defects.

It, however, has been suggested that it might be advisable at this time to provide by statute in substance that the examinations should be entirely practical, and should be confined or limited to the qualifications of the applicant for the particular branch of the service which he seeks to fill, or otherwise restrict or regulate the same so as to insure practical tests of fitness for the office sought, as distinguished from theoretical ones merely; and it is claimed that such amendment would be more likely to secure actual competency and real fitness, as well as render the system more acceptable to the great masses of the people who are now said to regard it with some jealousy and distrust. It is possible that no further amendment is necessary, and that the desired object can be accomplished under the existing statutes by the voluntary action of the Commission.

The whole subject is commended to your thoughtful consideration.

With an earnest conviction that the system of civil service which our State has been the first to apply, is full of promise for the better administration of public trusts, and a remedy for many evils that have long been regretted, I recommend that the Legislature continue to give such countenance and support to the work of the State Commission as will best promote the system, and give to the people of the State its full benefits.[5]

NATURALIZED CITIZENS.

Our election laws provide for the registration of voters in all cities of the State and all villages of over 7,000 inhabitants.

They also provide that in the city of New York no naturalized citizen can be registered unless he produces his naturalization papers before the board of registry, and in the city of Brooklyn the same provision exists as to all persons naturalized since 1867. In case he has lost, mislaid, or accidentally destroyed his papers, and does not chance to have in his possession a duplicate or certified copy thereof to produce, he is or may be absolutely prevented from registering and is consequently deprived of his vote.

In the other cities and villages of the State where registration is required, no naturalized citizen can be registered unless he produces his naturalization papers or a certified copy thereof, or proves their loss or destruction "to the satisfaction of the board of registry." The latter provision, however, is of very little value to the naturalized citizen because the board may arbitrarily refuse to be satisfied by his oath of their loss or destruction, as is very frequently the case, and there is no adequate remedy and he is prevented from registering and voting.

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[5] The appropriation act, chapter 240, contained a provision that orderlies and watchmen appointed in the Capitol should be persons who served in the Union army or navy during the late war, and had been honorably discharged therefrom, and they were not to be subject to civil service rules of examination.

The large number of naturalized persons throughout the State, being many of our best and most valued citizens, the liability of their naturalization papers being mislaid, lost or destroyed, and the inconvenience as well as hardship of requiring such papers to be kept constantly on hand to be produced at every registration, coupled with the fact that children of a naturalized father when they become of age may legally vote upon their father's papers, but of which papers they have neither the custody nor control, and the further fact that naturalization may have occurred many years ago and in distant States, and the procurement of copies may be a matter of difficulty and delay, present strong considerations in favor of the propriety of an amendment to these laws, removing these unnecessary restrictions upon the right of naturalized citizens to register.

The path to the ballot-box should be as free to the adopted citizen as to the native born.

These laws should be modified so as to dispense with the present arbitrary requirements in regard to the production of naturalization papers and should provide that a naturalized citizen may be registered with the same facility as any other person, and if his right is challenged or the fact of his naturalization disputed, he should be permitted to make oath to the fact, which oath should be conclusive for the purpose of such registration. If the oath should be false he afterward can be prosecuted both for perjury and for false registration. His oath as to his own naturalization should be just as sufficient and conclusive as is the oath of any other citizen as to the fact of his residence and other qualifications.

The privilege of voting by a foreign born citizen in New York, Brooklyn, or elsewhere should not absolutely depend upon his ability at all times to produce his naturalization papers; and in no part of the State should it be in the power of any board of registry by the exercise of any discretionary or *quasi* judicial powers, to deprive any voter of so valuable a right as the exercise of the elective franchise.

FOREST PRESERVATION.

The Forestry problem has in late years become an important one; and through natural causes and through the operations of some industries in the northern counties of the State, it is becoming every year more important and pressing. It is claimed by those who have given the subject attention that the preservation of the forest growth, especially in those parts of the Adirondack region which are unfit for profitable tillage, is a matter of serious concern to the material prosperity of the entire State. Valuable water-courses are largely dependent upon the preservation of the forest trees now standing, and a restoration of a new growth to tracts which have been left waste; and this protection of rivers and streams is doubtless in this matter the chief consideration to the State at large. In addition, however, the northern counties are threatened at no distant day with a serious diminution, or even loss, not only of the profitable and rapidly growing industry of caring for the numerous persons who from within and without the State resort to their lakes and woods for health or pleasure, but also of the lumbering industry itself. It seems probable also that the owners of forest lands ought to be afforded ampler protection against trespassers who set fire to or cut or injure trees upon such owners' lands. Pursuant to the direction of the Legislature, the Comptroller in July last appointed a commission consisting of

Prof. C. S. Sargent, of Harvard University, the well-known expert in Arboriculture, D. Willis James of New York, William A. Poucher of Oswego, and Edward M. Shepard of Brooklyn, to report a plan of forest preservation. The report of this commission will be early transmitted to the Legislature by the Comptroller; and it is hoped that the Legislature will, as soon as practicable, give such careful consideration to the legislation recommended by that commission as it may seem to merit in view of the alleged serious importance of the subject.[6]

FREEDOM OF WORSHIP.

The Constitution provides that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind."[d]

This constitutional guaranty of religious liberty should receive a liberal construction. It must be held to extend to the people in all their conditions and situations in life, and is a privilege so sacred that it should be jealously preserved from infraction, forfeiture or alienation.

It should be allowed to the inmates of our penal and reformatory institutions and institutions of every character receiving public aid, including houses of refuge and societies for the reformation of juvenile delinquents; and there should be secured to all these unfortunate classes the right of being visited by clergymen of the denomination to which they or, if minors, their parents belong, or whom they prefer, with permission to enjoy the religious services of such denomination to be had or administered according to its rules and discipline, and subject only to such reasonable regulations as may be prescribed by the managers of such institutions or as may be established by law.

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[6] This commission, which was appointed by the Comptroller under an act passed in 1884, chapter 551, examined the subject of forest preservation, and made a report to the Comptroller, which was transmitted by him to the Legislature on the 23d of January, 1885. [See Assembly Document No. 36.]

Chapter 283, passed May 15, 1885, created a forest commission, to be composed of three persons to be appointed by the Governor and Senate. The commission was given general supervision of the forest preserve established by the act, including several counties and parts of counties in the Adirondack region, and also forest lands in the counties of Greene, Ulster and Sullivan. The act contained detailed provisions relative to administration.

[d] Const. 1846, art. 1, § 3.

It is understood that such privileges have been for years freely accorded in most of such institutions throughout the State without the necessity of any special enactment to enforce the provisions of the Constitution, but it is claimed in some quarters that in some of them these rights and privileges are either denied in whole or in part or their enforcement evaded, or they are not permitted with that freedom or in the true spirit contemplated by the Constitution.

This accusation furnishes a proper subject for legislative inquiry, and if it is ascertained to be well founded it should be remedied by such wise and well-considered legislation as will effectually remove all just ground for complaint.

Any proper enactment having for its true purpose the enforcement of the inviolable right of religious liberty and freedom of worship to be enjoyed by persons of every creed and nationality according to the dictates of their own consciences and in accordance with their time honored customs and ceremonies, will receive prompt executive approval.

It has ever been the pride and boast of our State that its laws, public institutions and public officials were free from religious bigotry and intolerance, and its good name in that respect should not be tarnished at this late day by the omission to faithfully enforce those provisions of the Constitution adopted by our fathers, which were intended to protect every person in the enjoyment and benefits of the religious belief of his own choice, and to enable him to participate in the rites and sacraments of his own church wherever he may be placed.[7]

LEGISLATIVE COUNSEL.

One of the greatest evils incident to the hasty methods of modern legislation is the careless and imperfect manner in which bills are generally framed. Much needed legislation is annually lost because of the large number of measures which are left in the hands of the Executive at the adjournment of the Legislature, which are so defective that they cannot properly be approved, and when all opportunity for correction is gone. Many such measures, known as bills in the interest of reform and better government in the city of New York, as well as other important bills, failed last year because of serious defects of verbiage, which rendered their approval impossible, and the Legislature having adjourned, the errors were unable to be corrected. The record shows that during the legislative session of 1883 some forty-five bills were recalled from the executive chamber after their final passage, for necessary amendments and correction, while during the last session of 1884 there were fifty of such instances. This course of procedure occupies the time and engrosses the attention of the Legislature as well as of the Executive, and imposes upon the latter a very serious burden and responsibility, and all could be avoided if greater care and attention were devoted to the original preparation of the various measures proposed to be enacted.

These imperfections appear very generally in local legislation, and it is evident that the bills are usually framed by persons other than members, who possess little or no legislative experience, who are often unfamiliar with existing statutes and unacquainted with well settled legal phraseology.

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[7] An act was passed in 1892, chapter 396, "to provide for the better security of the freedom of religious worship in certain institutions." It applied "to inmates of every incorporated or unincorporated society for the reformation of its inmates, as well as houses of refuge, penitentiaries, protectories, reformatories or other penal institutions, continuing to receive for its use, either public moneys, or a *per capita* sum from any municipality for the support of its inmates."

It is suggested that provision be made by law for the appointment of a competent person to act as counsel to the Legislature during its session, who shall receive a reasonable compensation to be paid by the State, whose duty it shall be, at the request of any member, to prepare any measure desired to be introduced in either house, to give legal advice in reference to proposed legislation to the members and to the various committees, and to inspect the various bills before their final passage in order to detect errors and imperfections, and to suggest the necessary amendments and generally to act as the legal adviser of the Legislature. This duty cannot well be performed by the Attorney-General, who is the law officer of the State, for the reason that his department is already overburdened with duties that fully engross his own time and that of his assistants.

Such appointee should be a person familiar with legislation, well versed in the law, of approved integrity and judgment, and it is believed that the services of such an official would prevent the passage of many crude and imperfect bills, shorten the sittings of the Legislature, prove in the end a saving to the State, and prevent the loss of many important and salutary measures at the close of each session.[8]

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[8] Similar recommendations were made by several colonial Governors, and references will be found in the index to various suggestions relating to legislative counsel.

In 1889, chapter 289, a statutory revision commission was created for the purpose of revising certain general laws. The powers of the commission were enlarged by subsequent statutes, and in 1893, chapter 24, the legislative law (L. 1892, chap. 682) was amended by adding the following section (23):

"It shall be the duty of the commissioners of statutory revision, on request of either house of the Legislature, or of any committee, member or officer

THE RECENT AMENDMENT.

An important amendment to the Constitution has recently been adopted, to which your attention is especially directed.

It is an amendment to section 11 of article 8 and provides among other things that

"No county containing a city of over 100,000 inhabitants, or any such city, shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may exist, shall be absolutely void.

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The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over 100,000

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thereof, to draft or revise bills, to render opinions as to the constitutionality, or consistency, or other legal effect of proposed legislation, and to report by bill such measures as they deem expedient."

The Statutory Revision Commission was discontinued in 1900. In 1901 by chapter 88, the foregoing section 23 of the Legislative Law was amended by authorizing the temporary president of the Senate and speaker of the Assembly to appoint not more than three persons "whose duty it shall be, during the session of the Legislature, on request of either house of the Legislature or of any committee, member or officer thereof, to draft bills, examine and revise proposed bills, and advise as to the consistency or other effect of proposed legislation."

By custom the chairman of the Statutory Revision Commission acted as legal adviser to the Governor. The act of 1900, chapter 664, which repealed the statute of 1889, creating the Statutory Revision Commission, also by an amendment to the Executive Law (L. 1892, chap. 683) created the office of counsel to the Governor, and made it his duty to "advise the Governor in regard to the constitutionality, consistency and legal effect of bills presented to the Governor for his approval."

Governor Odell (1901–5) did not appoint a counsel, but during this period the Attorney General acted as legal adviser to the Governor. Governor Higgins, at the beginning of his term in 1905, made the first appointment of counsel under the act of 1900.

inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city."

This constitutional limitation upon the power to create debts is of vital significance, and a failure to observe its provisions becomes most disastrous in its consequences. It renders "absolutely void" all bonds or obligations of a city or county issued in violation of its terms. This provision must seriously affect the value of all such negotiable securities, as every purchaser is put upon inquiry as to the existence of the facts upon which their validity depends, and he purchases at his peril.

The amendment imposes upon the Legislature greater caution in the passage of local bills authorizing the incurring of indebtedness and requires care that the constitutional limitation shall not at any time be exceeded.

The theory of the amendment seems to be that it is wise that there should be some constitutional check upon the absolute and unrestricted power of taxation which has heretofore existed, and which experience has shown has led to serious abuses, and is liable to be unjustly and arbitrarily exercised in the hands of unfaithful or irresponsible officials, and that the power to contract debts to the extent of ten per cent. of the entire valuation of cities or counties containing 100,000 inhabitants, and to collect annual taxes to the amount of two per cent. thereof is a sufficient and reasonable exercise of sovereign authority, which will furnish to such localities ample means for the needs of government, if economically and honestly expended, and at the same time provide an abundant safeguard against extravagance and corruption.

If the beneficial effects of this experiment shall become manifest after a proper trial, it may be advisable to consider the propriety of extending its provisions to the other cities and counties of the State.

The power of taxation is one of the highest attributes of government, and while the people will cheerfully bear its just burdens, they will welcome any reasonable restraint upon its reckless or improvident exercise.

Public officials sometimes fail to realize that the functions which they exercise are committed to them as a sacred trust, and that the money which they expend belongs to the people, and not to them.

They have the right to use it for the legitimate expenses of government, and for nothing else.

They have no moral or legal right to squander it or give it away. As has been well said upon this subject, by one of my predecessors in a similar communication, "Official generosity is official crime."

If it be asserted that the design of this constitutional safeguard can be frustrated or evaded by a fictitious increase of the valuation of the taxable property, it may be answered that no constitution or law exists that cannot be to some extent thwarted by unpunished corruption on the part of officials.

Constitutional restrictions and stringent laws may check or embarrass their efforts, but it cannot entirely prevent them.

The reliance of the people after all must be upon themselves, and in the honest enforcement of whatever guarantees are enacted for their benefit, and in the sure punishment of evil-doers who corruptly evade or tamper with them.[9]

THE NEW CAPITOL.

The work upon this structure has progressed during the past year as rapidly and apparently as economically as was possible under the embarrassments against which the Commissioner had to contend.

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[9] This section was amended by the Constitution of 1894, and became art. 8, § 10. It was further amended in 1899, in 1905, and in 1907.

He has not been permitted to continue the work during the whole year.

He was obliged to suspend his operations from January 19, 1884, until March 22, 1884, by reason of the failure of the Legislature to make any appropriation, and by reason of the inadequacy of the one finally made he was unable to continue his full force of men longer than July eighteenth last, when he was obliged to discharge 456 men, and, by reason of the substantial exhaustion of such appropriation he was compelled, on October tenth last, to discharge 852 men, being essentially his entire force of workmen, and to discontinue the work from that date.

The policy which only provides for the continuance of so important a public work for a little over six months in the year is manifestly an unwise one and contrary to all correct business principles.

It is in the interest of true economy that the Capitol should be completed at the earliest practicable date.

The capacity and honesty of the Commissioner who now has charge of the work is conceded on all hands, and the wisdom of the act concentrating the responsibility of its management in the hands of one competent builder has been abundantly vindicated by its two years' trial.

The fact should be recognized that it is no slight undertaking to organize a large force of reliable and skilled workmen, and, when so organized, it is hurtful to the State, as well as injustice to them and their families, that it should be constantly changed, or that the work should be delayed by repeated interruptions and long suspensions.

The State should conduct its business the same as any careful and prudent man would manage his own business.

For the details of the work accomplished during the past year, you are referred to the report of the Commissioner, containing a description of the same, which soon will be transmitted to you.

It seems almost needless to urge that it is highly important that the work should be pushed to its early finish as speedily as possible, and to that end such sum should be appropriated as the Commissioner can economically and judiciously expend, and as the Legislature in its discretion may determine to be proper.

It would greatly add to the appearance of the Capitol if the grounds or park in front of it could be suitably graded and beautified during the coming season, preparatory to the construction of the contemplated terraces and approaches. It is a much-needed improvement which ought to be commenced at once, as the citizens of Albany, as well as visitors generally, should not be compelled longer to endure the unsightly aspect which the Capitol Park presents.[10]

THE NEW ORLEANS EXPOSITION.

As is well known, there is now being held in the city of New Orleans the World's Industrial and Cotton Centennial Exposition, which is attracting universal attention. It was inaugurated under the joint auspices of the United States, the National Cotton Planters' Association, and the city of its location, and marks a new epoch in the history of this Republic, its influences promising to open up new avenues of commerce for our surplus products and manufactures, bringing this country into closer intimacy with the fifteen Spanish American States as well as other nations, and the establishment of more friendly relations between the citizens of the different States of our Union.

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[10] Appropriations aggregating $1,030,000 were made for the purpose of continuing work on the New Capitol, and for deficiencies.

Chapter 330, passed May 23, created an advisory board, composed of the Governor, the Attorney General, the President of the Senate, or if there be no President, then the President pro tempore, of the Senate, and the Speaker of the Assembly, who were required to be familiar with the work being done on the Capitol, and among other things "designate in writing to the Commissioner of the Capitol, the parts and portions of such building that shall be advanced or completed under the appropriations made by the Legislature," and the Capitol Commissioner was required to act in accordance with such instructions.

Governor Hill on approving the bill filed with the Secretary of State a memorandum expressing his disapprobation of several features of it, and explaining the reasons which led to its approval. [See memorandum under date of May 23.]

Chapter 336, approved May 26, appropriated $175,000 for a boiler house and coal sheds.

The objects sought to be accomplished are most worthy ones and deserving of generous assistance.

The Commissioner for this State represents that the amount appropriated to it by the general management for the purpose of enabling him to defray the necessary expenses of forwarding, collecting, arranging, and properly exhibiting the various products constituting our State display, including suitable reception-rooms or other apartments for the comfort and accommodation of our own citizens and others visiting the exposition, with proper attendants to explain our exhibits and otherwise to advance and subserve the interests of New York, is inadequate for such purposes, and he requests a State appropriation of $5,000 in order that our State may be represented creditably, and its wants, productions and interests abundantly recognized and appreciated.

The application is commended to your favorable consideration, in the belief that such action will be taken as the dignity and importance of the Empire State requires.[11]

AGRICULTURAL INTERESTS.

The interests of the farmers of the State should receive whatever encouragement and fostering aid it is within the power of the Legislature legitimately to bestow.

Their farms pay a greater proportion of the taxes, according to their value, than any other species of property.

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[11] Chapter 5, passed January 29, appropriated $5,000 for expenses in connection with the New York exhibit at the World's Industrial and Cotton Centennial Exposition at New Orleans.

The farmers as a class add the least to the criminal and charitable expenses of the localities where they reside, and they have never asked or received but little consideration at the hands of the State.

Of late years farming has become more scientific in its operations; old systems are giving place to more intelligent plans, and higher skill is being developed in all the methods of farm labor.

For the purpose of aiding the development of agricultural industry by experimentation, the State in 1882 very wisely purchased a farm near Geneva and established at public expense what is known as the New York Agricultural Experiment Station, which has ever since been in successful operation under honest and able management.

The enterprise is yet in its infancy, but it is rapidly developing its utility and acquiring the confidence of those practical farmers who have heretofore doubted its usefulness, and bids fair to greatly improve and benefit the whole farming interests of the State.

From a personal inspection of the station and careful inquiry into its management, I am satisfied of its great utility and confident that it deserves liberal encouragement at the hands of the Legislature and should receive such an appropriation as its board of control report that it needs for its proper support during the ensuing year.[12]

Closely allied, if not strictly a part of the agricultural interests of the State, are its dairy interests.

These interests are greater than is generally understood, the amount of property invested in the business and the value of the dairy products of the State being evidently much under-estimated.

Last winter the Legislature passed an act (chapter 202, Laws of 1884) to prevent deception in sales of dairy products, and particularly to prevent the manufacture and sale of oleomargarine, and providing for the appointment of an official to be known as the New York State Dairy Commissioner to enforce the provisions of the law. The act went into effect on the first day of June last, and the Commissioner appointed under it has been diligently and zealously engaged in its execution. He reports that there have been twenty-eight convictions for violations of those sections of the statute relating to impure, unwholesome and adulterated milk, and that penalties to the amount of $300 have been paid over to the State Treasurer, and that other suits and proceedings are now pending and undetermined.

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[12] The general appropriation act, chapter 240, appropriated $20,000 for the agricultural experiment station at Geneva.

He further reports that about sixty prosecutions have been instituted for the unlawful sale of artificial butter, and that by reason of such prosecution at least eighty per cent. of the illegal traffic which has heretofore existed has been broken up.

It is recommended that provision be made by law to enable the Dairy Commissioner to procure accurate statistics of the dairy interest throughout the entire State; and it is believed that such statistics will show it to be an immense industry, and one that is entitled to a far greater share of legislative attention than it has heretofore received.[13]

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[13] The act of 1884, chapter 202, was amended at this session in several particulars, providing more stringent means for the enforcement of the law, and enlarging the powers of the dairy commissioner. A supplementary act was passed, chapter 183, relating particularly to milk and products to be manufactured therefrom, and prescribing a standard of purity of milk.

The supply bill, chapter 525, appropriated $1,000 for the purpose of extending dairy knowledge and science among the people of the State. The money was to be expended under the direction of the vice-president of the New York State Dairymen's Association.

L. 1885, chap. 183, was sustained in People v. Arensberg, (1887) 105 N. Y. 123; People v. Waterbury, (1887) 44 Hun, 493; People v. West, (1887) 106 N. Y. 293; People v. Kibler, (1887) 106 N. Y. 321; People v. Hill, (1887) 44 Hun, 472; Waterbury v. Egan, (1893) 3 Misc. 355.

L. 1885, chapters 183 and 458, amending 1884, chap. 202, were held unconstitutional in People v. Marx, (1885) 99 N. Y. 377; People v. Arensberg, (1886) 103 N. Y. 388; Waterbury v. Egan, (1893) 3 Misc. 355.

THE INTERESTS OF LABOR.

The problem of the production and proper distribution of wealth is as old as society itself.

The unprecedented increase in the wealth of the country which has come largely through the development of our great natural resources and the introduction of labor-saving machinery has presented many new phases of this problem.

It has caused large aggregations of capital in single hands and the growth of enterprises such as were not possible a few years ago.

With these have come great monopolies and many abuses of which the laboring people justly complain.

These abuses were not contemplated when the great body of our laws were enacted, and as to them our existing laws are defective.

Bitter controversies arise between labor and capital, which at present can only be settled by force or endurance, and in these controversies the weaker party must succumb.

Facilities have been afforded by law to enable capital to incorporate and combine for its protection; like facilities should be afforded for the organization of labor. The importation of pauper contract labor should be prevented and some system for the settlement of controversies between employers and employed, other and better than the remedy by strikes, should be devised.

It would seem that the difficulty could be greatly lessened by the enactment of laws establishing and regulating the arbitration of such controversies.

That the subject is one of the greatest importance is shown by the fact that notwithstanding this great increase of wealth, there are now thousands of laboring people who are able and willing to work, standing idle while they and their families are denied the comforts and many of the necessaries of life.

It is therefore evident that labor does not receive its fair proportion of the rewards which industry and honesty entitle it to share, and that misgovernment exists which should be inquired into and remedied.[14]

GENERAL LEGISLATION.

It is represented that there exists a necessity for important amendments to the building laws of New York city and Brooklyn, and that there also should be framed a general building law to be applicable to the other important cities of the State.

It is evident that without the active assistance of modern architects and builders the Legislature cannot safely or intelligently prepare such measures; and it is a matter for serious reflection whether it is not advisable that a commission of disinterested experts skilled in the construction of buildings be authorized to be appointed for the purpose of reporting to the Legislature at the present or its next session proper laws for the construction, regulation and inspection of buildings in said cities and the better protection of life and property therein.

Under "the General Assignment Act of eighteen hundred and seventy-seven," whereby an insolvent debtor may make an assignment of his estate for the benefit of creditors, he is permitted to make such preferences among his creditors as he chooses. It has been demonstrated by experience that this power is subject to great abuse. It often leads to unjust favoritism, unfair discriminations, and an inequitable distribution of the debtor's property, which, it would seem, it ought not to be the policy of the law to tolerate. It is a matter for careful consideration whether the ends of justice would not be promoted by an amendment to the General Assignment Act either limiting preferences to a portion of the assigned estate or forbidding them altogether except for wages of employees.*

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[14] The Governor's suggestion as to arbitration was embodied in a law, passed in 1886, chapter 410, "to provide for the amicable adjustment of grievances and disputes that may arise between employers and employees, and to authorize the creation of a State Board of Arbitration."

Among the statutes passed in 1885, relating to the subject of labor, were chapter 314, for the protection of life and limb; chapter 342, a new Mechanics' Lien Law, and chapter 376, relative to the payment of wages of employees of certain corporations of which receivers should be appointed.

L. 1885, chap. 342, was sustained in Riggs v. Shannon, (1891) 27 Abb. N. C. 456, 44 N. Y. S. R. 365; Boyd v. Stewart, (1893) 30 Abb. N. C. 127; Schillinger Fireproof Cement & Asphalt Co. v. Arnott, (1897) 152 N. Y. 584.

The present mode of executing criminals by hanging has come down to us from the dark ages, and it may well be questioned whether the science of the present day cannot provide a means for taking the life of such as are condemned to die in a less barbarous manner. I commend this suggestion to the consideration of the Legislature.[15]

It is evident that there should be passed a distinct repealing act of those portions of the Revised Statutes and other general statutes, particularly specifying them, which have been superseded by the Code of Criminal Procedure and the Penal Code. A similar course was pursued after the adoption of the Code of Civil Procedure (see chapter 417, Laws of 1877), and the propriety of its observance at the present time is manifest.[16]

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* The general assignment act of 1877, chap. 466, was amended in 1887, chap. 503, by adding section 30, which limited preferences to one-third of the assigned estate after deducting the wages or salaries of employees and the costs and expenses of executing the trust. Laws 1877, chap. 466, as amended 1884, chap. 328, preference was sustained in Richardson v. Thurber, (1887) 104 N. Y. 606.

[15] In 1886 an act was passed, chapter 352, appointing a commission to examine and report as to the most humane and practical method known to modern science of carrying into effect the sentence of death in capital cases, and report to the next Legislature.

In 1888 an act was passed, chapter 489, amending the Code of Criminal Procedure by directing the execution of the death penalty by means of electrocution instead of by the method then in use.

The act was sustained in People ex rel. Kemmler v. Durston, (1890) 119 N. Y. 569; appeal for a writ of error denied, 136 U. S. 436.

[16] This suggestion was embodied in chapter 524, approved June 13, 1885, "to provide for the repeal of the statutes that have been superseded by the Penal Code and Code of Criminal Procedure." A bill for that purpose was to be prepared and reported to the next Legislature by the Attorney General. In 1886, a general repealing act, chap. 593, was passed.

It is also apparent that all the penal statutes providing that certain acts are misdemeanors ought to be embraced within the Penal Code. There are many laws on special subjects, providing that their violation shall be a misdemeanor, which are not included in that Code, which ought to be complete within itself and embrace every crime recognized by the law. When the Penal Code shall be thus perfected, the people should be made thoroughly familiar with its contents, as by reason of the recent changes in the criminal law, there is at present a lamentable lack of knowledge among the general public as to what acts are criminal in their nature, and good citizens are liable to become violators of the law ignorantly and without evil intent; and a copy of such Code should be placed, at public expense, in every school district library in the State to the end that the people may know, and the children may be taught as to what acts are criminal in the eyes of the law. There are serious differences of opinion among the legal profession as to the wisdom of a general codification of the remaining law, but there is less as to the propriety of a simple revision of our statutory law. Since the Constitution of 1777, the following revisions have been made: Jones and Varick, 1789; Kent and Radcliff, 1801; Van Ness and Woodworth, 1813; the Revised Statutes, 1828 to 1830.

Since 1830 more general laws have been passed, and relating to more important and widely differing subjects, than during the period from 1777 to 1830. The statutes relating to a particular subject are in many cases numerous and inconsistent, as, for instance, the laws applicable to corporations, including religious corporations. All the laws applicable to and regulating State prisons, penitentiaries and county jails should be embraced within a single statute, instead of being scattered throughout various session laws, conflicting, and in a state of confusion as at present. It is unnecessary to multiply other illustrations.

It would seem as though there could not be much objection to an intelligent revision of our statutes, but as the sentiment upon this subject is far from unanimous, it is submitted to the Legislature for its consideration without further comment.[17]

The expediency of enacting greater restrictions upon the powers of officers of corporations is worthy of careful deliberation. Certain corporations can be dissolved by the action of their directors without the consent and even against the protest of their stockholders. The propriety of imposing some limitation upon this power would seem to be beyond question.

The matter of railroad supervision constantly presents new and perplexing problems. The people expect and are entitled to demand from the railroad corporations the imposition of the lowest charges possible consistent with the actual cost of transportation and a reasonable profit, but they do not and should not desire such ruinous competition as has lately existed among certain railroads of the State, whereby passengers and freight are carried at rates much below actual cost, and which, if continued, must eventually engulf many of them in bankruptcy, and entail great losses upon an innocent class whose means — often trust funds — are invested in such enterprises. The matter is one demanding the earnest attention of the Legislature, and such provision should be made by law as to insure the protection of the patrons of the railroads and also the people whose money is invested in their securities.

CONCLUSION.

We enter upon our respective duties to-day under circumstances which mark an important epoch in the history of our State and country. The year 1885 witnesses the peaceful transition of the general government from the political power of those who have controlled it since 1860 into the hands of the political party that prior to that date had administered it almost uninterruptedly since its foundation.

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[17] The Legislature of 1889, by chapter 289, created a statutory revision commission which continued in existence until the end of the year 1900. The commission reported a large number of revision bills, most of which were passed and became laws.

This significant result has not been produced by the efforts of partisans alone, but greatly by the independent thought, conscience, and vote of the country.

Freedom from party trammels on the part of the people is the distinguishing feature of the political situation at the present time.

The people demand better government, purer methods and higher aims, and whatever party gives the best evidence of the honest fulfillment of such purposes will receive their confidence and approval.

It is to be hoped that a generous rivalry may exist among all departments of the State government, to so administer its affairs as to meet these just demands and merit this confidence and approval.

DAVID B. HILL.

SPECIAL MESSAGES.

January 19. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 19, 1885.

"I respectfully call your attention to the propriety of some legislation pertaining to the approaching census.

The Constitution provides that "an enumeration of the inhabitants of the State" shall be taken under the direction of the Legislature in the year 1855 and every tenth year thereafter.[e]

Such enumeration, which should furnish the basis of representation of the several counties of the State in the

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[e] Const. 1846, art. 3, § 4.

Legislature, was undoubtedly intended as the principal and primary, if not the sole object of such requirement.

The Legislature, in the passage of census laws, seems to have enlarged upon what was contemplated by the provisions of the Constitution, and, in addition thereto, provided for the collection of statistical information of various kinds, thereby enlarging the functions and increasing the duties of the enumerators, besides adding to the expenses and the time required for such work.

Since 1855 there have been created, by the State, various bureaus or departments, the duties of which, in whole or in part, require the collection of much statistical information, which embraces nearly all that is of positive value, and that, together with the information derived from the decennial census of the general government, would seem to furnish all the statistics which are really essential, and render it appropriate to limit the present census to the particular purpose specified in the Constitution.

The Secretary of State, in 1875, recommended that the gathering of such statistical information be omitted hereafter and that the decennial census be confined exclusively to an enumeration of the inhabitants of the State.

Such a course would be in the interest of economy, and, it is believed, would meet the approval of the people.

Aside from the amounts paid by the respective counties, the census of 1865 cost the State the sum of $62,555.54, and that of 1875 cost the sum of $128,067.90, while by confining the census to a simple enumeration of the inhabitants in the manner herein mentioned would not require from the State an expenditure of over $10,000 or thereabouts.

Chapter 64 of the Laws of 1855 constitutes the principal statute under which the approaching census is to be conducted, unless the same should be repealed or amended. That statute requires the census to be perfected in July.

It is admitted that it should be amended by requiring the census to be completed before May first, 1885, or, if that is objectionable, then that it be commenced and completed late in the fall, as there is manifestly great difficulty in perfecting an accurate enumeration, especially in cities, during the summer months.

The propriety of a change in this particular was mentioned by Hon. Chauncey M. Depew, late Secretary of State, in a special communication to the Legislature in January, 1865, and the suggestion is well worthy of adoption.

The expediency of vesting in the county clerks of the respective counties the performance of many of the duties relating to the census, including the appointment of enumerators, and the compilation of county returns in each county, is submitted to your consideration.

Whether such powers and duties could not be better exercised by such local officer, who is elected by the people of his county, is familiar with its territory and inhabitants, and could personally know and advise with most of the appointees, than by a State officer located at the Capitol of the State, having no such opportunity, knowledge or familiarity, is suggested as a question for your determination.

The taxpayers of the respective counties are obliged to pay for the services of the enumerators, and some voice in their selection might not be inappropriate.

In any event, it is clear that the act should be amended, or a distinct one passed, bringing the enumerators within the jurisdiction of the Civil Service Commissioners. Such appointees should be selected subject to the rules and examinations prescribed for persons seeking similar public positions, as there should be no exception made in this branch of the public service.

Competency, efficiency and peculiar fitness should be the sole tests to be applied in the selection of such officers, and the rules and competitive examinations of the Civil Service Commission, if made applicable to them, would ensure such most desirable qualifications.

Your early attention to this subject is most earnestly invoked.[18]

DAVID B. HILL."

January 22. To the Assembly: Transmitting the annual report of pardons, reprieves and commutations.

January 27. To the Legislature: Transmitting the annual report of the Cooper Union.

January 28. To the Assembly: Transmitting the second annual report of the Civil Service Commissioners.

February 10. To the Senate:

Veto of a bill entitled "An act to provide for the appointment of an additional number of notaries public in the counties of Monroe and Onondaga."

"This act authorizes and empowers the Governor to appoint, in and for each of the counties of Monroe and Onondaga, one hundred notaries public, in addition to the number now provided by law.

No sufficient reason appears why these particular counties should have proportionately a greater number of these officials than the other counties of the State.

It is claimed that the population of these two counties has greatly increased since the last State census, especially in the cities of Rochester and Syracuse, and that this fact justifies this unusual measure.

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[18] A census bill was passed, but was vetoed by the Governor. See veto message of April 29. An extraordinary session of the Legislature was called to meet May 15, for the purpose of considering the subject of a State enumeration. Another bill was passed at this extraordinary session, but it was also vetoed on the 27th of May. The next enumeration law was passed in 1892, chapter 5, under which an enumeration of the inhabitants of the State was taken in February of that year.

But the same argument may be made in behalf of every other city and county in which the population has largely increased, and the approval of this bill opens the way for special legislation in favor of all such localities.

Little inconvenience can result if these places shall be required to wait for the next census, which is expected to be taken this year, when their exact, instead of their estimated population can be ascertained, and their true proportion of such officers awarded them, instead of making, at the present time, an arbitrary allowance as provided by this bill.

It would seem as though neither of these counties would suffer for want of an adequate number of these officials, as Monroe county already has 228 notaries, besides seven bank notaries, while Onondaga county has 214 notaries, besides fourteen bank notaries. In addition to these officials, I am informed that the city of Rochester alone has some 800 commissioners of deeds, who are authorized in that city to take affidavits and acknowledgments, while Syracuse has, or is entitled to have, under the laws of the State, whatever number of such last named officials its common council may appoint, unless the city has restricted itself by its own charter.

This bill cannot consistently be approved unless I am prepared to approve of similar bills for other parts of the State which are sure to follow.

Such a course would result in a general increase of such officials throughout the State.

It is clear that such general increase is neither desirable nor expedient, and a bill providing therefor was vetoed by Governor Robinson in 1877, by Governor Cornell in 1880 and by Governor Cleveland in 1883.

Their able and conclusive messages upon this subject are respectfully referred to the consideration of the Legislature.

I have heard no good argument advanced which convinces me that I should take any different course from the one pursued by them."

The bill was not passed over the veto.

February 24. To the Assembly: Transmitting the annual report of the quarantine commissioners.

March 12. To the Senate:

Veto of a bill entitled "An act to amend chapter four hundred and ninety of the Laws of eighteen hundred and eighty-three, entitled 'An act to provide new reservoirs, dams, and a new aqueduct with the appurtenances thereto, for the purpose of supplying the city of New York with an increased supply of pure and wholesome water.'"

"This bill proposes to add the president of the board of fire commissioners to the aqueduct commissioners already in office.

The aqueduct commission now consists of the mayor, the comptroller, the commissioner of public works, and three private citizens, as provided by chapter 490 of the Laws of 1883.

When the measure for the construction of the aqueduct was first contemplated, there existed much diversity of opinion in reference to the proper commission of officials who should be charged with the work. Such disagreement existed both in and out of the Legislature, and for some time prevented the passage of a satisfactory act. Finally, after much controversy and discussion, which nearly imperiled the passage of any measure whatever, it was agreed, as a matter of compromise between all conflicting interests, including the authorities of New York city on the one side, and the citizens representing the taxpayers on the other, that the commission should consist of three officials, namely, the mayor, comptroller and commissioner of public works and three citizens and taxpayers named in the bill, and thereupon the Legislature, regarding favorably such adjustment of conflicting views, passed the act providing for such a commission. That seemed to be a proper and equitable division of powers and responsibility, and appeared to give general satisfaction. There has been no complaint since then that such commission was improperly constituted, or that, owing to any disagreements or impropriety on the part of its present members, there has been created any necessity for any addition.

This bill proposes to destroy the equilibrium now existing between the office-holding and the tax-paying element, and to give representation to another department of the city government, having no proper connection with or relation to the construction of the aqueduct.

No good reason appears to be advanced why the board of fire commissioners should be represented, any more than the board of health, the police commissioners, or any of the other many departments of that city. It is true that the fire department is interested in the proper distribution of water within the city, but with this distribution the aqueduct commission has nothing whatever to do, its duties being confined solely to the construction of the aqueduct by which the water is to be brought to the city, and thereafter the water, and all the means for its distribution, are under the control and management of the department of public works.

The bill certainly establishes a bad precedent, and would undoubtedly furnish the pretext for propositions to add other departments another year.

The departments already represented on the commission are amply sufficient to protect the interests of the city government, if the officers honestly do their duty, and no other officeholders are demanded upon it for any good or laudable purpose.

A bill of this same purport was not approved by Governor Cleveland last year, who said in his memorandum of disapproval: 'The board, as now constituted, seem to have the work well in hand, and I can see no good purpose to be gained by an addition to their number.'*

The situation has not materially changed since then, and it could hardly have been expected that this bill would be approved, under such circumstances.

I can discover no argument for the passage of this bill, except to provide an additional place for another official. The public interests do not seem to have been consulted in its passage, and I am clear that they will not be subserved if it becomes a law, or be injured if it fails."

The bill was not passed over the veto.

March 13. To the Assembly:

Veto of a bill entitled "An act to exempt school district number one, in the town of Palmyra, from the provisions of chapter 555 of the Laws of 1864, so far as it prohibits any supervisor from being eligible to the office of school trustee, or a member of any board of education in his town."

"This bill, as its title indicates, proposes to exempt a single school district in the county of Wayne, from the provisions of the general law which prohibits any supervisor from being eligible to the office of school trustee or member of any board of education in his town.

The circumstances giving rise to this measure are, that a very estimable citizen is supervisor of the town of Palmyra, and has been or is proposed to be made a member of a board of education in that town, and that the citizens or some of them are desirous of having him hold both offices. It must be conceded that this is special legislation in its most objectionable form. For reasons which were deemed valid and unanswerable, the Legislature passed a general act (chap. 555 of the Laws of 1864) prohibiting any supervisor from being also a trustee or member of any board of education. The theory of that act undoubtedly was that the duties of the respective offices were inconsistent with each other, or might, in many instances, conflict, and hence should be discharged by different persons.

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*Ante, vol. 7, p. 1118.

It may have been regarded as sound public policy that no person should hold two distinct offices; but whatever reasons may have existed for its enactment, it was deliberately placed upon the statute books and has ever since remained a general law of the State. If its prohibitory provisions are improper or unwise, they should be repealed.

There is no good reason why one town in the State by a special act should be excepted from the operation of this general law. The law should be uniform upon this subject throughout the whole State, and such legislation as this, which is special and of very doubtful expediency, should not be encouraged.''

The bill was not passed over the veto.

March 19. To the Assembly:

Veto of a bill entitled "An act creating a board of town auditors in and for the town of Hornellsville, in the county of Steuben, and to prescribe their powers and duties."

'' This bill illustrates the fickleness of legislation upon the subject of the establishment of tribunals for the auditing of town accounts, and makes manifest the necessity of determining upon and adhering to some settled policy.

A brief history of previous legislation upon the subject may not be inappropriate.

From the year 1813 until the year 1875 the supervisor and town clerk, together with the justices of the peace, constituted a town board for the auditing of accounts in each town in the State. That system, which was continued in existence for so many years, seemed to work well and gave general satisfaction. But, in 1875, the State entered upon a new experiment, and passed an act providing for the election of three persons in each town, to constitute a separate board of town auditors. Since that time there has existed more or less dissatisfaction with that system, and confusion and inconsistency in the legislation has resulted therefrom. The Session Laws are filled with conflicting and special legislation upon the subject.

In two years thereafter the Legislature, by a special act, provided that the counties of Suffolk (except the town of Islip), Onondaga, Saratoga (except the town of Saratoga Springs), Ontario, Yates, Rensselaer, Genesee, Schenectady, Monroe, Livingston, Otsego, Schoharie (except the town of Schoharie), Niagara and Orleans should be exempted from the operation of said act of 1875. In 1878, by another special act, thirteen more counties were also exempted. In 1879 by a like act, seven additional counties or parts of counties were likewise exempted. By another act of that same year, two towns in Chenango county were exempted. In 1880 the county of Oswego (excepting three towns), was exempted, and by three other distinct special acts passed that same year, several towns in other counties were also exempted. Then in 1881 another act was passed to exempt the counties of Chemung and Greene, but it was very properly vetoed by Governor Cornell, who pertinently said:* 'The legislation in reference to town auditors affords an apt illustration of the facility with which the Session Laws are filled with unimportant enactments. The office of town auditor was created by chapter 180 of the Laws of 1875. That law was amended once in 1877, twice in 1878, and three times in 1879, and in 1880 no less than four different amendments of the law were enacted. These several amendments have exempted thirty-seven counties from the operations of the law, and two bills now awaiting

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**Ante*, vol. 7, p. 554.

Executive action make exemptions in five other counties, thus leaving but eighteen counties subject to the law. It is manifest from this continual demand for exemption that the creation of the office of town auditor has not accomplished beneficial results; and, judging the future by the past, it may be predicted that county after county will be exempted by special acts, until the original statute is practically disposed of. It is, therefore, respectfully submitted that the Legislature should at once consider the propriety of repealing the law of 1875, and thus avoid the necessity of further trifling with this subject.'

Finally, in 1883, the Legislature repealed the act of 1875, thus returning to the old system which had existed previously to that date, but in the very repealing act, strange as it would seem, permitted four towns in Clinton county, one town in Madison county and three towns in Warren county to be excepted from such repealing act. The bad precedent thus established by such exception was followed up a month later by also excepting all of the towns in the county of Essex. Then follows the present bill proposing to re-establish a separate board of town auditors for a single town in the county of Steuben.

It is respectfully submitted that this variable and inconsistent special legislation should cease. The State should adopt some system for the proper administration of town affairs and then firmly adhere to it. The law should not be changed every year or two to suit the caprice or supposed wants of particular localities.

It may well be urged that there should exist one general law, providing for a uniform board or system for the auditing of town accounts in each of the towns of the State. The town offices should be substantially the same throughout the State, and a stranger should not be obliged to consult all the Session Laws to ascertain what particular offices exist in a certain town. It is perhaps unnecessary to state that I have no preferences or prejudices for or against either of the two systems of auditing town accounts, and will be satisfied with whichever the Legislature sees fit to adopt. But it is insisted that it is manifestly the duty of the Legislature to adhere to whatever plan shall be selected, and not to constantly alter it by special acts whenever a town fancies that it desires a change.

If the present bill shall become a law, I am informed that other bills of like character for other towns are to be presented, and the flood-gates of special legislation will be opened. There are over nine hundred towns in the State, and it is unwise and objectionable to encourage the passage of special acts providing for different town offices in each of the counties in the State, and in parts of the same counties. The law of 1883 authorizes, or rather permits (with the few exceptions mentioned, and perhaps one or two others), the existence of a uniform auditing board in each town of the State, consisting of the supervisor, town clerk and the justices of the peace, and if this system is to be changed, it should be done by a general act applicable to the whole State.

If, for any purpose, it is not desirable that there should exist uniformity in the official boards who are to audit town accounts, nevertheless this can be accomplished by a general act better than by special legislation. A proper general act can be framed permitting the electors of each town to determine by a vote whether they desire a distinct and separate auditing board similar to that provided by the act of 1875, or the one at present existing, and providing for the adoption and maintenance of whichever system the majority may select. Such a measure would enable the electors of any town to determine for themselves what system they desire, without any intervention on the part of the Legislature, and the objection of special legislation would be avoided.

The propriety of the passage of such a general act is commended to your consideration.

The present bill, however, which is a special act providing in effect for excepting the town of Hornellsville from the repealing act of 1883, is clearly objectionable for the reasons before stated, and cannot be approved."

The bill was not passed over the veto.

March 20. To the Assembly:

Veto of a bill entitled "An act to authorize the Lowell Cemetery Association, in the town of Westmoreland, county of Oneida, to reduce the number of trustees thereof."

"There is no objection to this corporation reducing the number of its trustees, except that it should not be done by special legislation. The Legislature should not be called upon to act in reference to such comparatively unimportant matters.

This association was not incorporated under a special act, but was organized under chapter 133 of the Laws of 1847, which was a general act providing for the incorporation of rural cemetery associations. It is true that there is no provision in that act for reducing or increasing the number of trustees of any association organized under it, but it can be easily amended by providing for such a proceeding, and that course should be taken. There are a large number of such associations throughout the State organized under the same act, and instead of amending each of their charters by a special act whenever they desire additional powers or privileges, the general act should be amended so as to confer the same upon all of them. Some of them should not have peculiar rights or privileges to the exclusion of others.

The Constitution prohibits the Legislature from granting special charters to such corporations as these, but if after being once organized under general acts, it can amend their charters from time to time at its discretion, the Constitution is easily evaded and the prohibition is practically valueless.[f]

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[f] Const. 1846, art. 3, § 18, added 1874, art. 8, § 1.

It seems needless to urge that it is our duty to prevent all unnecessary local legislation, in order that the Legislature may have ample time to consider other and more important measures of material interest to the whole State.

It is observed that a general act amending the act of 1847 has already been introduced in the Assembly to provide for the very objects sought to be accomplished by this bill.''[19]

The bill was not passed over the veto.

March 23. To the Assembly:

Veto of a bill entitled "An act to convey to William F. Lawrence certain lands under the waters of the Hudson river at the city of Yonkers."

" This act would establish a bad precedent.

While the Legislature undoubtedly has the inherent power by a legislative act to convey lands of the State under water, the exercise of such power has been very infrequent in the history of the State, and was not contemplated by the Constitution.

The Constitution intended to create a tribunal or body for such purposes, and it provides (art. 5, sec. 5) for a board to be known as 'Commissioners of the Land Office,' and such commissioners are vested by statute with the control and disposition of such lands. It is their special province to make grants in perpetuity or otherwise upon proper terms, as they may deem necessary to promote the commerce of the State or proper for the purpose of beneficial enjoyment by adjacent owners, after a due investigation of all the facts, which inquiry they are empowered to institute. Such a board — which consists of seven State officers — is peculiarly adapted for the creditable discharge of such duties, and can better ascertain the real merits of the applications for such lands, and more efficiently protect the interests of the State, than can the Legislature acting during its hurried session.

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[19] The general bill referred to by the Governor was passed and became a law, chapter 171, on the 27th of April, 1885. The act authorized cemetery associations to reduce the number of trustees.

A departure from the long-established precedent of refraining from legislative interference in matters which are conceded to be within the proper jurisdiction of such board should not now be attempted, but the present applicant should be left to pursue the usual course which has heretofore been followed. The time and attention of the Legislature should not be permitted to be engrossed in private legislation of this character, when a proper tribunal has been established for the accomplishment of the very objects contemplated by this bill.

It is not only special, but private legislation, which is wholly unnecessary.

By reference to the public papers of Governor Hoffman, at page 139, it will be found that in 1870 a bill of similar character failed to meet Executive approval; the Governor's objection being based on the ground alone that the Commissioners of the Land Office had full power in the matter." *

The bill was not passed over the veto.

March 23. To the Assembly:

Veto of a bill entitled "An act to regulate the election of Commissioner of Highways in the town of Greenburgh, county of Westchester."

"This bill is objectionable because it is special legislation. It relates to the election of one town officer in a single town of the State. It provides that no person who is a resident of any village situate in the town of Greenburgh shall be eligible to the office of commissioner of highways of said town.

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* *Ante*, vol. 6, p. 210.

It is difficult to discover why it is any more improper or unwise for residents of villages in this particular town to be eligible to this office than residents of other villages in other parts of the State similarly situated.

The law upon this subject should be uniform throughout the State. If for any good reason a resident of an incorporated village ought to be prohibited from holding this particular town office, the prohibition should be universal, and not restricted to a locality. Special legislation should always be avoided, except where it is indispensable to meet emergencies of absolute necessity, or where imperatively demanded to enforce the observance of constitutional guarantees.

These conditions are not claimed to exist in respect to the measure in question.

The act is also of questionable propriety. It would seem to be expedient, as well as sound public policy, that all of the electors of each town should remain eligible to every office within the town, and the selection of competent and faithful officials may as appropriately be left to the good sense and sound discretion of the electors, who usually act intelligently and sagaciously in such local matters, as to attempt to impose disqualifications on a portion of the electors by legislative interference, preventing the voters from selecting whomsoever they choose for their town officers." *

The bill was not passed over the veto.

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* By the Town Law, Laws 1890, chapter 569, section 38, as amended by Laws 1895, chapter 262, residents of an incorporated village cannot vote for highway commissioner if the village constitutes a separate highway district, and is "exempt from the supervision and control of the commissioners of highways of the town and from the payment of any tax for the salary or fees of said commissioners, and from payment of any tax for the opening, erection, maintenance and repair of any highway or bridge of said town, without the limits of said village," nor can such residents vote on an appropriation for general highway purposes in the town outside the village. The statute also provides for a separate ballot box and a separate poll list in such cases.

April 1. To the Assembly:

Veto of a bill entitled "An act to amend chapter 318 of the Laws of eighteen hundred and eighty-four, entitled 'An act to authorize the Board of Claims to hear, audit and determine the claims of the State for balances due on the books of the Comptroller from certain counties.'"

"This bill proposes to authorize an appeal to the Court of Appeals from any award which may be made by the Board of Claims under the Act of 1884, sought to be amended.

The Court of Appeals is already overburdened with litigation occasioned by its extensive appellate jurisdiction, and new labors should not be imposed upon it unless imperatively demanded.

There does not seem to be any absolute necessity for the bill. The Act of 1884, which provides that the Board of Claims may hear, audit and determine the claims of the State for balances due upon the books of the Comptroller from certain counties, contemplates a proceeding of the nature of an arbitration and not a hostile measure similar to a suit at law. If the award is adverse to any counties, there seems to be no provision made in the act for its enforcement by judgment or decree. The hearing is rather in the nature of an impartial investigation to enable the State and the counties interested to amicably ascertain the true situation of their accounts. It lacks many of the attributes of a judicial determination, and certainly the awards have not, in many respects, the effect of judgments.

No appeals should be authorized to be taken to the highest court of the State from mere investigations or arbitrations. In analogy to arbitrations generally the awards in these proceedings should be final and conclusive; or, at least, should not be reviewed in the first instance by the court of last resort. If they should be reviewed at all by any court, the Special or General Terms of the Supreme Court should first pass upon them. No very important questions of law are likely to be involved in the decision of such claims, and the necessity for their review at all, is not apparent.

The provisions of this bill would lead to unnecessary litigation, useless expense, and unsatisfactory legal results. I cannot learn that the bill is desired either by the Attorney General, the Board of Claims, the Comptroller of the State, or the Court of Appeals."

The bill was not passed over the veto.

April 6. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 6, 1885.

"The Civil Service Commission have requested me to inform you that in order to insure the proper examination of census enumerators who are expected to be appointed to conduct the approaching census, it is necessary that there should be immediately appropriated a sufficient sum to defray the expenses incident thereto.

This is required to cover the expense of stationery, printing, postage, advertising, some extra clerical services, and other miscellaneous disbursements.

The Commission are without adequate funds for such purposes, and in the absence of an express appropriation therefor, are believed to have no authority to incur any indebtedness on account thereof.

The Commission are vested by law with the sole power of appointing examiners, and, instead of making political appointments by selecting the persons who had been suggested to them, concluded, in order to save expense to the State and in the exercise of a proper discretion, to select for such examiners persons already employed in the civil service throughout the State, who, by the law, are required to conduct such examinations without additional compensation.

The wisdom and propriety of the course pursued by the Commission in respect to such examiners, as well as in the classification of enumerators under the rules formulated by them, are very manifest, and if their efforts are supplemented by needed legislation, will secure the appointment of competent and intelligent enumerators, selected solely for their fitness, rather than political favorites appointed as a reward for factional or political services, and will insure capable examining boards already organized, nonpartisan in character and especially qualified for the work to be done.

The Commission further request me to make known to the Legislature their desire for the postponement of the date fixed for the commencement of the taking of the census and the appointment of the enumerators, because, in their judgment, the limited time which they understand is allowed by law is insufficient for the proper accomplishment of the examinations contemplated by the rules. This can only be done by legislative enactment, but it can easily be provided for in an act making the necessary appropriation.

It is evident that the Commission labor under the impression that it is absolutely indispensable under the Act of 1855, that all the appointments, in order to be valid, should be made on or before May first next; but it may be suggested that the provisions of that act, in reference to the date of making such appointments are only directory, and do not invalidate any appointments which may be subsequently made prior to the actual commencement of the taking of the census, which is not required to be begun until the first Monday in June.

It should not be anticipated that there will be any undue haste to make such appointments, as the only purpose thereof would be to evade the civil service rules. But, nevertheless, the advisability of express legislation granting further time, even beyond either of the dates mentioned, is very apparent, and I concur in the views of the Commission in that regard. It rests with the Legislature to take such action as will facilitate the application of civil service rules and render them effectual.

Having thus complied with the request of the Commission to communicate to you their desire for further and immediate legislation, it is not deemed inappropriate at this time to respectfully call your attention to my special message of January nineteenth last, wherein several recommendations were urged in reference to the subject of the census. No definite action having been taken concerning them since that date, and no appropriation having as yet been made for the taking of any census whatever, which appropriation may be an indispensable condition precedent to all legal preliminary preparations therefor, and while the subject thus remains unacted upon and must be presently considered, it may be useful to recall the suggestions then made, in order that the propriety of their adoption may be considered with the other legislation now advised. Among other things, it was proposed:

First. That the taking of the census be changed from the summer months to late in the fall. This course had been recommended by two previous Secretaries of State, for the obvious reason that an accurate census could not well be taken in our large cities during the summer months, when a considerable portion of the people were absent and their residences closed. This change is manifestly just and should not be opposed. It is hoped that no partisan advantage which may be anticipated can be derived by insisting upon a date so clearly unjust to the large cities, will prevent the Legislature from adopting the change suggested.

Second. It was recommended that the census be limited to the simple enumeration of the inhabitants as contemplated by the Constitution.[a]

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[a] Const. 1846, art. 3, § 4.

It is believed that it was clearly demonstrated that most of the statistical information collected under previous censuses is either absolutely worthless or is cumulative, having already been obtained from other sources. It is clear that if the approaching census should be limited in the manner proposed, it would effect a saving to the State at large of over $118,000, and in addition thereto a saving to the respective counties of over $189,000, being a total saving of over $307,000. The main labor, expense and time required for the census, is involved in the collection of this 'other statistical information,' and, if this shall be dispensed with, it can be readily seen that the expense will be but nominal as compared with the vast amounts required if the old course shall be continued. It is confidently believed that the taxpayers of the State will cordially approve of such a change and consequent saving of their money. It is quite likely that several schemes or bills now pending before the Legislature, requiring the expenditure of vast sums of money may (perhaps properly) be passed, and it is sound policy, in anticipation of such possible demands upon the treasury, to encourage a rigid economy and avoid a useless expense wherever it is feasible. The present furnishes a most favorable opportunity.

Third. It is further insisted that the civil service rules be expressly applied by affirmative legislation to the selection of the enumerators.

This recommendation was presented to obviate any possible doubt as to whether the civil service law applied to such positions. That doubt has been removed by the opinion of the Attorney General, who decided that they were covered by that act, and such decisions having met with general acquiescence, the necessity for further legislation on that point has been substantially obviated.

The first two recommendations in question are, however, believed to be still as valuable and essential to the people of the State as when first urged in January last. It is difficult to discover any reasonable or sound objections to them, and with all due deference to the Legislature, I respectfully reiterate my recommendation of their adoption at the present time. But whether or not these suggestions may meet with your concurrence, there can be no question as to the propriety of some early legislation upon this subject and the necessity of a prompt appropriation to facilitate the requisite preliminary steps needed for the census.

DAVID B. HILL."

April 10. To the Senate:

Veto of a bill entitled "An act to authorize the village of Middletown, in the county of Orange, to raise money to construct a village hall."

"This bill is wholly unnecessary. It authorizes the board of trustees of the village of Middletown to construct a village hall and to issue the bonds of the corporation in an amount not exceeding the sum of $25,000, and contains some other provisions relating to the same subject.

By chapter 482 of the Laws of 1875, the board of supervisors of Orange county have the power to grant to the village of Middletown all the necessary powers which this bill seeks to confer. The objects of this bill can, therefore, be accomplished by application to the local authorities of the county.

A bill of substantially the same character in nearly every respect was vetoed by Governor Cleveland last year.*

As an excuse for this act it is claimed that there is no authority in the general act by which the board of supervisors of Orange county can authorize the village to issue bonds for the purpose of erecting the village hall. Such authority is not necessary.

The supervisors have the power to authorize the erection of the building and the purchase of the site therefor, and, having given the village authority to create the necessary indebtedness, the village has the right, under existing laws, to issue bonds to raise the money to meet such indebtedness.

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* *Ante*, vol. 7, p. 1042.

Any municipal corporation authorized to create an indebtedness can issue its notes or bonds on account of any valid indebtedness which it has incurred. The courts have uniformly so decided."

The bill was not passed over the veto.

April 27. To the Senate:

Veto of a bill entitled "An act to amend the corporate name of the 'Elmira Female College.'"

"This act is wholly unnecessary. The Elmira Female College is a corporation of this State, and chapter 280 of the Laws of 1876 provides that such a corporation can have its name changed upon proper application to the Supreme Court.

The Legislature should not pass special laws where the objects thereof can be obtained upon application to the courts."

The bill was not passed over the veto.

April 28. To the Senate:

Veto of a bill entitled "An act to amend chapter three hundred and ninety-eight of the Laws of eighteen hundred and seventy-six, entitled 'An act to provide for the election and compensation of coroners in the county of Rensselaer,' and also to regulate the proceedings of such coroners."

"This bill establishes for the coroners of Rensselaer county a different method of procedure from that prevailing in other counties. Their duties, as well as those of other county officers, should so far as possible, be uniform throughout the State.

The proceedings and duties of coroners are regulated and prescribed by Title I of Part VI of the Code of Criminal Procedure. It is claimed by the advocates of this bill that abuses are possible under the regulations there laid down. If this is so, the Code itself should be amended, and all provisions relating to coroners thus be incorporated in the general law covering the subject. A coroner in one county should not possess greater powers or privileges, or be under restrictions which are not applicable to all coroners in the State.

The changes proposed by this bill are doubtless intended to serve good purposes, but I am unwilling to approve a measure which limits their application to a single county."

The bill was not passed over the veto.

April 28. To the Senate:

Veto of a bill entitled "An act to authorize the county clerks of Oneida and Columbia counties to record certain notices of pendency of action now on file in the county clerks' offices of said counties."

"This act authorizes the county clerks of Oneida and Columbia counties to record at the expense of their respective counties certain notices of pendency of action filed in such county clerks' offices prior to 1864 and not heretofore recorded.

Chapter 53 of the Laws of 1864 required that all notices of pendency of actions which should thereafter be filed in any clerk's office of this State, should be recorded by the county clerk, and that law has ever since been observed. That act further provided that any county clerk should record any such notices previously filed, provided any person interested therein should request such recording and pay the legal fees therefor. The proposed act, however, contemplates the recording of all such notices filed in the clerks' offices of the two counties in question prior to 1864, irrespective of any request from any one, and such recording is not to be at the expense of the parties interested, but at the expense of the county. This expense must necessarily be very considerable, and should not be authorized unless absolutely indispensable. There would seem to be but little necessity for such old papers being recorded, and this bill is unquestionably a cleverly devised scheme to financially aid the county clerks of the counties of Oneida and Columbia, and is not to subserve any real public interest. If there exists any good reason why such old papers should at this late day be recorded, the boards of supervisors of such counties have authority to authorize the clerks to perform such labor, and can pay them a reasonable compensation therefor. It does not appear that any application for such authority has been made to the board of supervisors of either of said counties.

Bills should not be passed imposing burdens upon the taxpayers of counties where authority exists in the boards of supervisors to determine such questions. Legislation having for its object such purposes as this should be remitted to the local authorities of each county, who are better able to judge of the necessity and propriety thereof.''

The bill was not passed over the veto.

April 29. To the Senate:

Veto of a bill entitled "An act to amend chapter three hundred and seventy of the Laws of eighteen hundred and seventy-five, entitled 'An act to amend and consolidate the several acts relating to the city of Elmira.'"

'' This bill provides for the creation of another ward in the city of Elmira, by the division of the present Fifth ward. Its enactment is not demanded by the public interests.

For the present, the Fifth ward is not so large in population as to require any division. It, last fall, had only a voting population of 990, while at the recent charter election it polled only 811 votes.

The division of this ward, at the present time, will be unfair to the rest of the city, and would inevitably lead to a demand for the division of other wards nearly as large. The Fourth ward, last fall, had a voting population of 925, being only sixty-five votes less than were cast in the Fifth ward, while this spring the Fourth ward polled but thirty-two votes less than the Fifth ward.

There already exist a sufficient number of wards for so small a city, and it is better for all concerned that they should remain as they are until a greater increase of population, or an enlargement of the city limits, shall render the propriety of a change more apparent.

The creation of a new ward gives an additional supervisor to the city, and, in view of the differences now existing between the city and the country towns in the Board of Supervisors, this legislation seems unwise and ill-advised.

A majority of the supervisors of the county are opposed to the bill, and since its introduction the common council of the city have also passed resolutions disapproving it, and have divided the ward into two election districts, thereby obviating some of the reasons that had been urged for the bill.

A remonstrance, signed by over 300 residents of the Fifth ward, was some time since presented to me against the measure.

There is no present necessity for the bill, and as it does not, by its terms, go into effect for many purposes until next year, no harm can result if its enactment shall be postponed until that time, when the increased growth of the ward, if such growth continues, or an extension of the city limits, or other events may require its passage. The delay will better enable the desirability and necessity of the measure to be determined, and no public interest can be harmed by its taking such a course."

The bill was not passed over the veto.

April 29. To the Senate:

Veto of a bill entitled "An act to amend chapter sixty-four of the Laws of eighteen hundred and fifty-five, entitled 'An act in relation to the census or enumeration of the inhabitants of this State, and making an appropriation therefor.'" [See note 18.]

"The Constitution of the State requires that "an enumeration of the inhabitants" shall be taken every ten years.[h] It does not require the enumeration of anything else, or the collection of any other statistical information whatever.

I am ready to approve any act or appropriation having for its sole object the fulfillment of this constitutional requirement, but it may properly be insisted that the Legislature in attempting or assuming to perform a constitutional duty, should not impose conditions or add objectionable provisions which are not contemplated by the Constitution and which place unnecessary and useless burdens upon the people.

The bill now before me is plainly open to criticism. It amends and confirms the act of 1855, under which it is proposed to take an elaborate census, containing statistics of many kinds, instead of a simple enumeration. Such a census as is contemplated by the bill which I return, and was permitted by the Act of 1855 is not required by the Constitution, and is not now desirable or necessary. It would cost the people of the State over $400,000, while an enumeration will cost the State at large only $10,000, and the counties not more than $70,000 in addition. The last State census, taken in 1875, cost the State at large $128,037.90, and the counties $263,034.99 additional, making a total of $391,072.89. The information derived, aside from the ascertainment of the population, had almost no practical value. More than $300,000 can be saved, if the Legislature shall provide only for the enumeration contemplated by the Constitution.

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[h] Const. 1846, art. 3, § 4.

This present bill is, therefore, clearly objectionable.

To reiterate what has been clearly stated in previous communications, that the reasons which existed thirty years ago for the gathering of elaborate statistics by means of a census do not now exist, seems unnecessary. State bureaus have been created which are required to gather all the statistical information that is essential for the State to collect. In addition to these sources of information, the United States census, which is most elaborate and exhaustive in its character, furnishes all that is necessary or even desirable. The collection by the State of any further statistics is a waste of money.

The discussion of this bill in the Senate developed a serious difference of opinion as to what 'statistical information' was required by the act of 1855. One opinion was that it was determined by the act, construed in connection with the previous census act of 1845, while others insisted that the extent and nature of such statistics was to be determined solely by the Secretary of State.

There are unanswerable objections to either position.

The statistics required by the schedules set forth in the Act of 1845 are valueless at the present time, and should not be continued. As to the other position, whatever information it may be deemed wise by the Legislature to collect, should be declared by law, and not left to the discretion of any officer. The extent, nature and form of the inquiries should be prescribed, set forth and limited, so that the Legislature may know exactly what is being authorized, and the people may be informed what questions they are expected to answer. The suggestion has been made that it is intended to have the proposed census conform in all respects to the United States census of 1880, and that a copy of it is to be furnished to the national government, in order that the State may receive, under the United States statute, one-half of what the government in 1880 paid enumerators. This bill, however, makes no provision for any such course, and, in the absence of an express provision authorizing such a procedure, it is difficult to discover how it is to be done. Besides, it certainly is not economical for the State to take a census which will cost five times what is necessary, in order to receive from the national government in return, only one-fourth of the money expended.

The attention of the Legislature was called to the subject of a census early in January. Four suggestions were then made by the Executive:

First. That the census be limited to the enumeration ot the inhabitants required by the Constitution.

Second. That in justice to the large cities, the enumeration should be postponed until autumn.

Third. That the appointment of the enumerators should be made by the county clerks.

Fourth. That the rules of the Civil Service Commission should be applied in the selection of enumerators.

The Legislature, in its wisdom, has decided not to adopt any of these recommendations. Since they were made the Attorney General has given as his opinion that the enumerators provided for in the Act of 1855 are public officials within the terms of the Civil Service Act, and must be classified. Accordingly the enumerators were classified by the Civil Service Commission and put in the competitive list. Adherence to the civil service rules would enable the most competent applicants to receive appointment, regardless of other considerations. To enable the Commission to conduct the examinations required by the rule, an appropriation of $7,000 was asked for by the Commissioners. The consideration of this application was delayed by the Legislature, and the appropriation was at last refused. That such a course was adopted is a matter for regret, for

I believe that such examinations would have secured more competent enumerators than any other method of appointment. There was ample time to hold the examinations had the appropriation been made promptly, and the refusal of the Legislature to appropriate the small sum asked for prevents the enforcement of the civil service law.

Under these circumstances it becomes more to be desired than ever that the proposed census, if taken at all, should be confined to the requirements of the Constitution.

There is ample time to perfect a bill embodying these suggestions in whole or in part, if, indeed, any of them shall seem wise to the Legislature. If a measure entirely different in character is insisted upon, it cannot be expected to meet with Executive approval.

This matter has not received from the Legislature that consideration which it deserves. The record of the proceedings of the Assembly shows that by parliamentary devices, the bill which is herewith returned, was ordered to a third reading without debate, immediately upon its receipt from the Senate, and that afterwards no discussion was permitted.

In conclusion, I desire to state plainly that any bill providing for an enumeration of the inhabitants of the State — and for that enumeration only — will be permitted to become a law, no matter by what methods, or under the supervision of what officer, the enumeration is to be taken. I am entirely willing to waive any opinions I may have upon the subject of methods, in order that the requirements of the Constitution may be met, although I firmly believe that if the suggestions made in January last were adopted, it would be for the best interests of the State.

The responsibility for any failure to carry out the constitutional provisions for 'an enumeration of the inhabitants,' must rest upon that branch of the Government which seeks, not to provide for 'an enumeration,' but to impose upon the people a collection of statistics which is elaborate, costly and useless."

The bill was not passed over the veto.

May 4. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *May* 4, 1885.

"I have the honor to transmit herewith the report of the Commissioners appointed under authority of a concurrent resolution of the Senate and Assembly, passed March 26 and 27, for the purpose of investigating charges made against the management of the Greenwood Cemetery corporation, together with the charges and answers therein.

DAVID B. HILL."

See Senate Document No. 51.

May 8. To the Assembly:

Veto of a bill entitled "An act to authorize and direct the county clerks of Genesee, Westchester, Oneida, Columbia and Orleans counties to record certain notices of pendency of action, now on file in the county clerks' offices of Genesee, Westchester, Oneida, Columbia and Orleans counties, and to prepare suitable indexes to the records of notices of pendency of action in said offices."

"This bill is similar in its character to Senate bill No. 62, which was last week returned to the Senate without approval.

The reasons given for the action in regard to the Senate bill, apply with equal force to the one herewith returned. The bill is, without doubt, a scheme for the financial benefit of the county clerks of the counties named in the bill, and is not designed to subserve any real public interest.

There is no pressing necessity that these old notices, which were filed over twenty years ago, should now be recorded at all, or, at least, not at the expense of the county. Litigants and other persons interested in them can, under existing provisions of law, have these notices recorded at their own expense, if they so desire. No good reason exists why the taxpayers of the respective counties named in this bill should pay for the recording of these notices, when such recording is merely for the benefit of the parties interested.

The boards of supervisors of the said counties have ample power and authority to authorize this work to be done at the expense of the taxpayers, if, for any reason, there may arise any necessity for it. Such legislation as this should be remitted to the local authorities for such action as they may deem wise. The people who are to pay the expense of the work proposed to be done should have the right to pass upon its necessity and propriety, by their immediate local representatives in the boards of supervisors."

The bill was not passed over the veto.

May 8. To the Assembly:

Veto of the following items in the appropriation bill, chapter 240.

"'For the Secretary of the Regents of the University, for salary, five thousand dollars.'[20]

This item is objected to and not approved.

The salary paid for several years to this official has been thirty-five hundred dollars. The increase of fifteen hundred dollars proposed to be made by this item of appropriation is not justified either by the method of legislation employed or the circumstances surrounding it. In the judgment of the Executive the appropriation bill should merely provide for the fixed charges upon the State as established by law.

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[20] A supplemental bill was passed, chapter 337, on the 27th of May, which provided for the salaries of the officers included in the vetoed items.

The item making an appropriation for stocking the St. Lawrence River and Lake Ontario with certain fish was omitted in the new bill.

If, for any reason, it is deemed necessary by the Legislature to increase the salary of any public servant, it should be done, not by increasing the amount of the item in the appropriation bill for that purpose, but by separate enactment. Such a course would permit the Executive to pass upon the merits of the increase, without being called upon, as in the present case, to veto the entire salary, and thus render necessary, a supplementary bill in order that any compensation for the services rendered may be received.

The propriety of increasing the salaries of State officials is not here passed upon, further than to say that, at a time when commercial depression has not only forbidden increase of salaries in private enterprise, but, in very many instances, has rendered necessary a reduction of wages, it would seem that the State does not wisely enter upon a course which is not in accordance with approved business methods.

'For the assistant secretary of the Regents of the University, for salary, three thousand dollars.' [See note 20.]

'For the deputy superintendent of Public Instruction, for salary, four thousand dollars.' [See note 20.]

'For messenger to the clerk of the Court of Appeals, for salary, one thousand dollars.' [See note 20.]

The increase of one thousand dollars proposed in the salary of the assistant secretary of the Regents of the University, of five hundred dollars in the salary of the deputy superintendent of Public Instruction, and of two hundred dollars in the salary of the messenger to the clerk of the Court of Appeals are objected to, and not approved, for the reasons already stated in the memorandum in regard to the increase of the salary of the secretary of the Regents of the University.

'For the Commissioners of the State Survey to prosecute the work of making a topographical map of the State in accordance with their last report to the Legislature, the sum of twenty-five thousand dollars.'

This item is objected to and not approved.

This appropriation is made in partial compliance with the recommendations of the Commissioners of the State Survey in their recent report to the Legislature. These recommendations proposed, among other things, an expenditure of forty thousand dollars per annum for topographical maps and surveys, whereby such maps and surveys could be made each year of from three to five counties of the State. The total estimated cost of the work is, therefore, over five hundred thousand dollars.

The experience of the State in other projects upon which it has embarked, shows that the amount actually required to carry to completion such a scheme, would, in all probability, be largely increased and possibly doubled.

There has already been expended by the State upon the work of this Survey the sum of one hundred and eighteen thousand three hundred dollars. While not intending to depreciate the work of the Commission, it may be safely asserted that the practical results of the work thus far have not been proportionate to its cost.

At an expenditure of twenty-five thousand dollars a year — the sum by this item appropriated — the work cannot be completed in less than twenty years, and I am convinced that before such a vast work shall be entered upon by the State, a plan of procedure should be carefully formulated by the Legislature, and definitely decided upon. Such a plan should be contained in a separate enactment, and not in the appropriation bill. The act creating the commission is indefinite and the subsequent legislation — almost entirely found in appropriation bills — concerning it, is variable and illy digested.

The appropriation now under consideration is not available for any purposes until the first of October next, and practically not available for the work proposed until one year from the present time. It will, therefore, do no harm to wait another year, when legislation upon this subject can be better considered.

In view of the fact stated, I am unable to consent to an appropriation of twenty-five thousand dollars, which appears to be the entering wedge for an expenditure of nearly one million dollars.

'For the prosecution of the surveys in the northern district of the State, in accordance with the provisions of chapter 499 of the Laws of 1883, twenty-five thousand dollars, and the Superintendent of said surveys is hereby authorized and directed to locate and monument such county, town and boundary lines as may require survey, and to extend the topographical work over such portions of the counties under survey as may be necessary to an accurate map of the same.'

This item is objected to and not approved.

The character of the work which may be necessary to be done in the Adirondack region is such that it can be performed under the direction of the State Engineer and Surveyor, and he is the proper officer to have charge of it.

The sum of seventy-seven thousand two hundred and seventy-five dollars has already been expended in this surveying work, with inadequate results, and before re-entering upon the undertaking a carefully prepared plan should be perfected and enacted by the Legislature.

The office of the State Engineer and Surveyor is created by the Constitution,[1] and it is made his duty by law to superintend the surveys of lands belonging to the people of the State. The Commissioners of the Land Office, who have the custody and control of these lands, have power to cause whatever surveys are necessary. Either the office of State Engineer and Surveyor should be abolished, or he should be permitted to perform the duties which properly pertain to the position. The creation or the continuance of separate bureaus, at a large expense, should be avoided where the duties conferred upon the bureaus can be performed by State officials, created by the Constitution.

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[1] Const. 1846, art. 5, § 2.

'For the Commissioners of Fisheries to be expended as they may deem proper, upon vouchers to be approved by the Comptroller, for the purpose of replenishing the lakes, rivers and other waters of this State with fish, as provided in chapter 285 of the Laws of 1868, chapter 567 of the Laws of 1870, chapter 74 of the Laws of 1873, chapter 523 of the Laws of 1875 and chapter 309 of the Laws of 1879, twenty-six thousand dollars; of which sum the Commissioners are hereby directed to expend two thousand five hundred dollars in stocking Lake Ontario with pike, white fish and salmon trout, and one thousand dollars in stocking the St. Lawrence river with black bass and California trout.'

This item is objected to and not approved, for the reason that in the last clause the Commissioners are directed to expend three thousand five hundred dollars in stocking Lake Ontario and the St. Lawrence river. The high character and fitness of the Commissioners are well-known, and the Legislature has very properly recognized these qualities in appropriating twenty-two thousand five hundred dollars to be expended as they may deem proper. I see no reason why they should be "directed" to stock this mighty lake and river, half the waters of which belong to a foreign government, even though they may deem it useless. They are the best judges of the needs of the State and should be permitted to expend the money untrammeled.

If, in their judgment, waters can and should be stocked, I doubt not they will attend to the matter.

The principle of directing expert officials how to expend money appropriated for their uses, I believe to be wrong, and should not be countenanced even in so small a matter as this. The Fish Commissioners should receive all the money the public needs demand, and they should expend it as they deem proper."

May 11. To the Assembly:

Veto of a bill entitled "An act to amend chapter 541 of the Laws of 1865, entitled 'An act to incorporate the city of Newburgh and the several acts amendatory thereof.'"

"The principal amendment contained in this bill provides for increasing the amount which the city of Newburgh is authorized to raise annually for contingent expenses from thirty thousand dollars to thirty-seven thousand five hundred dollars.

This amendment has not been submitted to the taxpayers of Newburgh, and it is doubtful whether it is approved by them. In fact, the documents which have been laid before me, upon the public hearing had upon the bill, tend to show that a large majority of the taxpayers are emphatically opposed to it. If it does not meet the approval of the taxpayers of Newburgh, it ought not to become a law. If it is not clear that a majority favor it, it is better that its enactment be delayed until its wisdom and propriety may be more apparent to those who are immediately interested in the welfare and progress of the city.

Besides, it does not conclusively appear that any increase of the contingent fund of the city is absolutely necessary. With the exception of the last two years, it is shown that during the last ten consecutive years the total amount levied was nineteen thousand three hundred and sixty-four dollars and sixty-one cents less than the amount provided for under the existing thirty thousand-dollar clause, and that during the same period the amount paid out of the contingent fund was sixteen thousand two hundred and eighty-five dollars and seventy cents less than the amount paid into it. The increase of the expenditures during the last two years appears to have been exceptional in its character and does not furnish a safe criterion by which to judge of the amount which should ordinarily be properly expended.

The restrictions upon the tax imposing power of our cities should not be removed unless the necessity is urgent. The tendency of the times is toward increased municipal expenditures, rather than toward economy and retrenchment, and every safeguard that can reasonably be afforded the taxpayers should be preserved. The power to levy a larger contingent fund furnishes increased opportunities for doubtful expenditures, greater facilities for raising salaries as well as multiplying officials, and must almost inevitably lead to higher taxation.

The common council of Newburgh are not without remedy in case it is desired to expend in any one year, for any proper purpose, a greater sum than thirty thousand dollars for contingent expenses. The charter provides the simple method of calling a special meeting of the taxpayers and submitting the question to their decision. If the object of the expenditure is a laudable and proper one, the people will readily approve it.

This power is ample and sufficient, and enables the local municipal authorities to meet all the proper needs of the city government, while, at the same time, the people have an opportunity to decide for themselves as to the propriety of the additional expenditures. It is therefore difficult to discover any present necessity for any additional power being conferred upon the common council, especially under the circumstances shown as to the sentiment of the people towards this measure.

It is claimed that the citizens' committee, composed of some of the best and most prominent citizens of Newburgh, appointed to oppose this bill, were not afforded such ample notice and fair opportunity to be heard in opposition to the bill before the committees of one or both of the houses of the Legislature as they desired and to which they were reasonably entitled. This is to be regretted, but it more strongly imposes upon the Executive the duty of a more careful consideration of this measure and of seeing to it that the interests represented by such committee are now fully protected.

After a full and fair hearing had before me in which I have patiently heard all that the friends and opponents of the bill desired to present, I am not convinced that the best interests of the city will be promoted by the proposed amendment becoming a law at the present time. It is possible that the growth of the city or the demand for local improvements may be so great, or other circumstances may arise such as to render this legislation advisable in the near future, but it is not expedient to anticipate these events by premature action. A wiser economy will be exercised by the servants of the city if the revenues of the corporation are barely sufficient to meet its reasonable demands than if they are abundant or excessive. There is always danger of extravagance on the part of municipal authorities if a surplus revenue is at their command or they have the sole power to create it by taxation beyond a reasonable limitation.

If it be true that the expenditures of the city during its present administration have been extravagant, thereby incurring the disapproval and losing the confidence of the citizens, it shows the propriety of not increasing the amount which such administration or its successors, similarly disposed, may legally raise by taxation upon the property of the taxpayers.

The citizens have the right, during the present depressed financial condition of the country, to insist upon the strictest economy and the greatest possible retrenchment, consistent with the successful conduct of the affairs of the city, and believing that such results can better be attained by permitting the present limitation in the city charter to remain where it is, the proposed amendment thereto is not approved."

The bill was not passed over the veto.

May 12. To the Assembly:

Veto of a bill entitled "An act to legalize and ratify certain local laws passed by the board of supervisors of Chautauqua county."

"This bill proposes to legalize chapter two of certain local laws passed by the board of supervisors of Chautauqua county, relating to fishing in the waters of Lake Erie, which are claimed to be in conflict with existing laws of the State of New York upon the same subject.

As two counties border upon Lake Erie, it is important that the laws relating to fishing in the waters thereof should be uniform, and it ought not to be attempted to regulate them by the local laws of either of such counties. It would be different if Lake Erie were embraced in a single county, but situated as it is, it is clear that the rules relative to fishing in the waters of that lake should be made by the Legislature of the State.

If the board of supervisors of Chautauqua county have passed any laws upon this subject which conflict with the existing laws of the State, the former should not stand, and no good reason exists why they should be legalized.

The act does not point out the precise respects in which the local laws passed by the supervisors are claimed to be not in accord with the general laws of the State, and the game and fish laws are now sufficiently numerous and conflicting, without being further complicated by such legislation as this. I cannot learn that the act is desired by the people of Chautauqua county who are interested in the proper preservation of fish."

The bill was not passed over the veto.

May 13. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *May* 13, 1885.

"The Constitution directs the Executive to recommend to the Legislature such matters as he shall judge expedient.[j] In accordance with this provision of that instrument, I desire to call attention to the condition of the laws for the punishment of crime where the penalty is death, and to recommend some changes which, it seems to me, would result in greater respect for law and swifter punishment for murder. The long delay which in almost every instance elapses between the original sentence of death and the execution of the criminal, has for many years been a scandal upon our system of criminal law, and recent changes in the statutes have resulted in aggravating that scandal. As the law stands at present, two appeals are not only possible, but usually resorted to in every case, one to the General Term of the Supreme Court, and, if the judgment is affirmed, a further one to the Court of Appeals. It is further provided that the day of execution must be not less than four, nor more than eight weeks after the sentence, and it has recently been enacted that the mere serving of a notice of appeal by the defendant's attorney upon the designated officers at any moment before the time set for execution, acts as a stay of proceedings. Thus it has come to pass that a criminal may be convicted and sentenced to death eight weeks after he is found guilty. Upon the day set for execution, his attorney may serve a notice of appeal, which prevents the execution. The appeal is heard at the General Term which may not sit until after an interval of several months. The judgment may be affirmed by the General Term and a second sentence of death may be passed upon the defendant, to be inflicted after a lapse of eight weeks. Upon the day set for execution, the defendant's attorney may serve another notice of appeal, which acts as a stay of proceedings as did the first, and after another interval of several months the case reaches the Court of Appeals, when, if the judgment is affirmed, a third sentence is pronounced, and at last the criminal is brought to justice. However strenuously the district attorney may labor to have swift justice meted out to murderers, the law itself makes this an impossibility, and intervals of one or two years between conviction and punishment are the rule, and not the exception.

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[j] Const. 1846, art. 4, § 4.

That whatever merit there may be in capital punishment is almost entirely lost by delay, is disputed by none, and the public discontent with the results of the present system is great and growing. With a view of providing a remedy for this evil, I requested the Attorney General to prepare a bill amending the Code of Criminal Procedure so as to avoid the present delays, and a bill to this end, drafted by him, is submitted herewith.

The method of procedure which I recommend makes the appeal direct from the Court of Oyer and Terminer to the Court of Appeals, when the judgment is death. The judgment-roll and the stenographer's minutes are made the case and exceptions, and the expense of printing is made a county charge. If these changes in the law are made, not only will the present protracted delay in the punishment of the guilty be avoided, and a great expense to the county be saved, but the poor, as well as the rich, will be enabled to have their cases passed upon by the court of last resort.

I trust that the Legislature, before its adjournment, will see fit to put this, or a law similar in effect, upon the statute books. It is necessary that some legislation should be enacted to do away, as far as possible, with the present protracted delay in the punishment of murder.*

DAVID B. HILL."

May 13. To the Assembly:

Veto of a bill entitled "An act to amend chapter thirty-four of the Laws of eighteen hundred and fifty-eight, entitled 'An act to make school district number nine in the town of Pomfret a union free school district.'"

"This act affects the city of Dunkirk. It is not desired by the common council of that city. The board of education have not petitioned for it; but, on the contrary, are opposed to it. The citizens of Dunkirk do not want it.

Under such circumstances it ought not to become a law."

The bill was not passed over the veto.

May 14. To the Assembly:

Veto of a bill entitled "An act in relation to the compensation of the stenographer of the Surrogate's Court of the county of New York."

"This bill increases the salary of the stenographer of this court from three thousand to four thousand five hundred dollars.

At the time of the passage of the 'public burdens act,' in 1880, an act intended to relieve the city of New York from the extravagances which had come to prevail through careless or corrupt administration, the salary of this officer was three thousand dollars. I see no reason why it should be increased at the present time, especially as I am informed that this officer, in addition to his salary, has a further income of several thousands of dollars, arising from his connection with the office.

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*In 1887, by chapter 493, section 517 of the Code of Criminal Procedure was amended by providing that an appeal from a judgment of death must be taken direct to the Court of Appeals. See also the Constitution of 1894, art. 6, section 9, excepting judgments of death from the general rule that appeals to the Court of Appeals can be taken only from judgments or orders of the appellate division of the Supreme Court. For the act providing for the execution of the death penalty by electrocution, see note 15, ante, p. 37.

From stenographers of other courts in New York city I have received communications protesting against this increase, for the reason that it makes the salary of this official out of proportion to that of other stenographers having equal work to do.

At a time when one branch of the Legislature has deemed it its duty to investigate the affairs of the city of New York, for the alleged reason that the expenses of the city have, of late, unduly increased, it would seem to be thoroughly inconsistent to enact a law which increases by one-half the salary of an official of that very city. It is by legislation such as this, enacted during a long series of years, not in response to public needs, but in compliance with the personal importunities of interested officials, that a large share of the burdens, now complained of, have come into existence.

It is suggested that if there were less legislative investigation into the burdens of the taxpayers of the city of New York, and more reduction of those burdens, the welfare of the citizens of the metropolis would be promoted.

The reasons given in former messages for not approving of increases in salaries at the present time, apply pertinently to this case. The people's money should be expended, not carelessly and extravagantly, but carefully and prudently."

The bill was not passed over the veto.

May 15. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *May* 15, 1885.

"I am informed by the respective committees of the Senate and Assembly, that the Legislature, having completed its business, is now ready to adjourn without date.

Section four of article three of the Constitution provides that 'An enumeration of the inhabitants of the State shall be taken under the direction of the Legislature in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter.' Such an enumeration is declared to be for the purpose of providing a basis of apportionment so that each Senate district shall contain as nearly as may be an equal number of inhabitants, and so that the members of Assembly as nearly as may be shall be apportioned among the several counties of the State.

This plain duty, imposed by the Constitution, of providing for a simple enumeration of the inhabitants and that alone, has been neglected by the Legislature of 1885. I now urge that you do not finally adjourn without passing a bill providing for such an enumeration as will secure to the people of the State their inherent, as well as constitutional right of just representation. [See note 18.]

DAVID B. HILL."

May 15. The Legislature adjourned without day.

MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

March 13.

Memorandum filed with Assembly bill, Chap. 54, relating to the police force of Troy.[21] Approved.

"The Legislature in the exercise of its discretion has seen fit to enact this measure. It passed the Senate by a unanimous vote, and with but one dissenting voice in the

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[21] As to bi-partisan police boards see Rathbone v. Wirth, (1896) 150 N. Y. 459, holding unconstitutional the Albany police act of 1896, chapter 427, which provided for a board of four police commissioners to be chosen by the common council, but no member of the council could vote for more than two, and in case of a vacancy the Mayor was to appoint a successor recommended by the members of the council belonging to the same political party as the

Assembly. Where such unanimity of sentiment is manifested in favor of a public measure, the Executive would hardly be justified in withholding his approval unless the bill is clearly unconstitutional, or it conclusively appears that some vital principle or sound theory of public policy has been violated. Where such elements are lacking it cannot be expected that the Executive will attempt to review the discretion vested in the Legislature. If this bill appeared to be a partisan measure, aimed by one political party against another, whereby either sought to gain some unfair advantages, it would be promptly disapproved. I should not sanction any such methods of political procedure. But such does not seem to be the tenor of the present bill or its avowed object.

It was substantially conceded by those who appeared before me in behalf of the opponents of the bill, that it was desired by nearly all of the people of Troy, without distinction of party. No remonstrances have been presented to me against it. The public sentiment of that city, so far as it has found expression and can be ascertained, appears to favor the measure. If there really exists a large element or faction, who are antagonistic to it, certainly it has not been made apparent. Under such circumstances, the duty of the Executive is plain: to permit the people of Troy to carry out their wishes as expressed in the unanimous action of the Legislature, and not attempt to thwart them by adverse interference.

In this view the mere propriety or expediency of the bill is not properly to be considered, and there remain but two constitutional questions to be passed upon.

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commissioner whose office had become vacant. It was held that a minority of the common council was not an "authority" within the meaning of the Constitution, article 10, section 2.

On the question whether the president of the common council was an authority within the meaning of the Constitution see Re Carboy, (1882) 27 Hun, 82, holding that the president *pro tem* of a board of supervisors was a county authority, and could be vested with the power of appointment.

Upon the public hearing which was given to the friends and opponents of this act, it was claimed by the counsel for the opposition that the bill is unconstitutional upon two grounds:

First. Because it requires that in the selection of the four police commissioners for said city, each half of the board shall be of opposite political parties; and

Second. Because the president of the common council, who is designated as the local official or authority, to make such selection, is not one of the 'authorities,' of said city, within the meaning of section 2 of article 10 of the Constitution. No direct decisions were cited in support of either of these propositions.

The provision requiring each half of the police board to be taken from opposite political parties is not a new one to the statute books of this State. It exists in the charters of a large number of cities. Its manifest fairness and propriety are unquestioned, and its constitutionality has never been seriously disputed. After having existed in so many different charters for so long a period of years, and there being no precise clause in the Constitution which can be pointed out as being violated in its enactment, and in all the controversies which have heretofore arisen in reference to such non-partisan police boards throughout the State, there having been no decision of the courts adverse to its legality, it would be clearly improper to refuse approval of the bill upon any such uncertain and chimerical ground.

There is more force or at least plausibility to the other objection, but I am satisfied that this is also untenable. The Constitution provides that all city officers, such as police commissioners, shall either be elected by the electors of such cities or 'appointed by such authorities thereof, as the Legislature shall designate for that purpose.'[k] The president of the common council is elected by the council from one of their number, and is vested with certain duties pertaining to city affairs. He is the presiding officer or head of the legislative branch of the city government, and represents that body to a certain extent. He is an officer of the city and represents in some particulars a portion or division of the municipality, and is one of the 'authorities' of the city, who may be designated by the Legislature to appoint minor officers, as much as the comptroller or any other city official or body, aside from the council itself. The word 'authorities' does not necessarily mean more than one person, as it is conceded that the mayor would be regarded as constituting the 'authorities' of the city, or one of them, within the meaning of this clause. The Constitution is to have a liberal, and not strained or narrow construction. The object of the clause in question was to provide that some local officer or authority, as distinguished from the Governor and the Legislature or other outside power, should make local appointments. That object is accomplished when the appointing power is vested by the Legislature in the head of the common council, who has been selected by the legislative branch of the city government as their especial local representative. In view of this plain reasoning, and in the absence of adverse legal authority, it would be presumptuous in the Executive to assert that this clause in the present bill is obnoxious to the Constitution.

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[k] Const. 1846, art. 10, § 2.

Assent to a proper measure, desired by a vast majority of the people of a city, should not be refused unless its unconstitutionality is very apparent. It is not so apparent in this instance, and the approval of the bill should, therefore, follow, unless it is in other respects grossly objectionable.

The bill provides for an entire reorganization of the police department of Troy, an increase of the police force, and for other changes said to be demanded by the public interests. The wisdom or advisability of these provisions has been passed upon by the Legislature. The maintenance of a strictly non-partisan board is directed and guaranteed so far as it reasonably can be. It is difficult to see how one political party is to gain any benefit or advantage over the other by the effect or operation of this bill. The officials who are retired by this measure belong, as I am informed, one-half to each political party, and if it is unjust to one party, or set of officials, it is equally so to the other. Personal considerations, or the desire for place of a few individuals, cannot be permitted to be urged against a public measure like this, seemingly demanded by the best public sentiment of Troy. It is believed that no injustice will, in fact, be done or permitted by the alleged arbitrary provisions of the bill, appertaining to the entire reorganization of the police force. Assurances have been given that the faithful and deserving officers will be retained, or rather reinstated, and that no harsh proceedings will be attempted or tolerated.

It is claimed and represented to me by the best citizens of all parties in Troy that the effect of this bill will be salutary and beneficial to that city, and tend to reform existing abuses of which they justly complain, and relying upon such assurances, and in the hope that it will be the means of giving to that municipality a purer and better government, I have concluded to permit it to become a law."

April 16.

Memorandum filed with Assembly bill, Chap. 131, incorporating the city of Amsterdam. Approved.

"Two successive Legislatures have passed a bill incorporating Amsterdam as a city. The one passed last year was disapproved by Governor Cleveland, but upon grounds which do not affect the other bill which is now before me.*

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* *Ante*, vol. 7, p. 1014.

Each Legislature seems to have acted with substantial unanimity, and the approval of the present bill is urged by both the Senator and Member of Assembly who represent the district in which Amsterdam is situate. Under such circumstances, that Executive approval should be withheld can hardly be expected or justified.

The granting of a city charter is usually purely a matter of discretion on the part of the Legislature, with which the Executive ought not arbitrarily to interfere. No matter what the private opinion of the Executive may be as to the wisdom or mere propriety of such legislation, the will of the people, as expressed by legislative action, and as announced by their chosen representatives should be permitted to prevail unless some important general principle or policy is to be violated or the interests of the State at large are to be injured.

The local representatives assume the responsibility of such legislation where matters of discretion only are involved, and due deference is naturally expected to be paid to their desires and wishes in reference to local affairs, on the part of the Executive, who cannot properly ignore them.

The charter in question is not claimed to be faultless, but it seems to have been finally carefully perfected, and no serious defects are now pointed out. The objections to it on the part of its opponents are not specially to any of its particular provisions, but because no city charter whatever is desired.

It is insisted by the opponents of the bill that the people of the village are opposed to a city government. That question, however, would seem to have been settled by the people themselves, who, at a recent election, voted upon this very subject, and by a majority vote expressed themselves favorably to the creation of a city. It is admitted that the question was well understood and was fairly submitted to the electors for their decision, and nothing has been shown to impeach the good faith of such submission or to detract from the legitimate effect which should be given to the sentiment thus expressed by the vote of the people. That vote has not been satisfactorily explained away and its significance cannot be ignored. In no other way was the sentiment of the people to be ascertained, and if the result of that contest is to have no weight, it was an idle and senseless proceeding indeed.

Unless I am justified in relying upon that vote as the true index of public sentiment, I am entirely at sea, and have no means of determining the conflicting claims which have been made before me. The friends of the bill assert with positiveness that a majority of the people of Amsterdam favor it, while its opponents are equally certain that such majority are opposed to it. I am utterly unable to decide between these irreconcilable claims, unless I may properly rely upon the result of the recent election, when the people voted directly upon the question. It would seem to be reasonable that such result should be accepted as conclusive. In fact it is difficult to see how the opponents of this bill can consistently or with propriety ask or expect the Executive to ignore or attempt to reverse such an expression of the people, especially after it has been respected and obeyed by the legislative branch of the government.

It is true that the majority was small, but it is nevertheless just as decisive. The majority must govern in this country, no matter how close the vote may be, and this rule applies to local as well as to national and State affairs.

It may be said that the majority have acted indiscreetly or unwisely, and that a bare majority should not be permitted to determine such a question. It is to be assumed that the electors themselves must necessarily be left to determine mere matters of discretion, and that unless a majority are permitted to decide such matters they must in effect be controlled by the minority, which would be far worse, and is contrary to the genius of our institutions. If the people make mistakes the people may be trusted to rectify them.

There are some other reasons affecting this question which while they are not controlling are entitled to be considered.

It is conceded that Amsterdam is growing rapidly, and that the adoption of a city government is only a matter of a year, or a few years. Its present charter is admitted to be defective, and sadly needs revision. Its corporate limits have not been extended for over thirty years, and naturally are now quite contracted. Its streets are in a wretched condition, and many public improvements are greatly needed, which cannot well be accomplished under the present village charter. Its population is sufficient to entitle it to become a city, and its necessities would seem to require and justify it. If a city government will be absolutely necessary in the near future, it would seem to be the part of wisdom to accept it now, rather than seek to amend the village charter and extend the village limits, when these changes must in all probability be followed in a year or so by an entire change of government.

Besides the prosperity and well being of Amsterdam seem to demand that this vexed question be settled at once. This contest has existed for several years, and has led to much bitterness and dissension, which have necessarily retarded the growth and injured the prospects of the village.

Adverse action on this bill would only protract the controversy for another year, and will not advance the best and truest interests of Amsterdam, which I am desirous of promoting.

It is far better that the issue be settled now, and while regretting that I am obliged to assume the responsibility of deciding so important and unpleasant a contest, I cannot, in the discharge of my public duty, either evade or postpone it.

It may be remarked that a mere change in the form of local government will not, of itself, materially aid the people of Amsterdam, or give them a better administration, unless the citizens who are interested in its true welfare take an active and intelligent interest in public affairs and see to it that only those are elected to office who will honestly carry out the benign provisions of the new charter with vigor, economy, and a commendable public spirit. If such a determination shall be manifested on the part of the people as well as the taxpayers of that village, there can be no doubt that the new charter will be instrumental for beneficial results, and that few will regret the change about to be made.

But, as before stated, the mere propriety of the adoption of the present charter is not to be considered here. That question has been passed upon by the Legislature. There may be good arguments on both sides, but they are more properly addressed to the Legislature than to the Executive. It is possible that a city government is not needed at the present time, and that a change will involve increased taxes and produce other unsatisfactory results. It is not, however, pertinent to speculate upon such questions, or to anticipate objections which should be raised elsewhere.

The action which I feel obliged to take is based upon the safe, tenable and reasonable ground that the people themselves have decided the question, and such decision having been accepted by the Legislature, it is conclusive upon me. It follows that I cannot, under all the circumstances, do otherwise than approve this bill.''

This act was sustained in Re Amsterdam (1891) 126 N. Y. 158.

THIRTY-DAY BILLS.

May 23.

Memorandum filed with Assembly bill, Chap. 330, the Capitol Appropriation bill. Approved. [See note 10.]

"This bill is approved, although almost every detail of the measure meets with my strong disapprobation. Under the circumstances, an explanation seems to be appropriate.

That portion of the bill which makes an appropriation for the construction of the Capitol is eminently proper. The sum appropriated, and more, is absolutely necessary for the diligent and economical prosecution of the work. Commissioner Perry requested an appropriation of one million four hundred and fifty thousand dollars, alleging that such sum could be judiciously and properly expended during this year, and was essential for continuing in employment the present efficient force of workmen. The Legislature, in its superior wisdom, denied such application, although it well knew that a less sum was wholly insufficient to retain the present organized force in employment longer than for a few months after making the necessary payments for materials, which will consume at least two-fifths of the appropriation. The effect of such action will necessitate a great reduction of the force, and the entire discharge of the workmen in the early fall.

That such effect was intended and deliberately planned is clearly evident. Such procedure is not only false economy, but it is unjust to the workingmen who, having anticipated steady employment here, have made no arrangements for work elsewhere.

The Legislature was deaf to all appeals for an increased appropriation, and upon that body alone must rest the responsibility of a reduction of the force and the stoppage of the work in the near future.

Had the best interests of the State alone been consulted, the Legislature would have granted the amount requested by Commissioner Perry; but other considerations, of a purely partisan nature, seem to have dictated the policy and controlled the action of the Legislature.

The portion of the bill which provides for an ‘ advisory ’ commission to ‘ advise ’ Commissioner Perry in reference to the work, is very objectionable.

A commission was wholly unnecessary. The present commissioner is conceded to be an honest and competent builder, and no solid reason exists why he should not continue to be vested with the sole power of construction.

Former commissions have proved expensive, useless and unsatisfactory, and were latterly designed for the accomplishment of partisan purposes.

The work has progressed honestly and rapidly under Mr. Perry, and he has never used his position for political purposes. No complaints have been made against him — no charges are presented — the Legislature refused to investigate his administration, and yet insisted upon placing over him a commission of State officials.

Under such circumstances it is the height of folly to establish such a commission. Three of the officials constituting the commission are lawyers — the fourth is a merchant and by the terms of this bill they are put over a practical builder and architect of high character and reputation both for capacity and integrity to ‘ advise ’ him what to do in the construction of the Capitol.

The proposition is so absurd and ridiculous that it is not embraced in a separate enactment, but is attached to the Capitol appropriation at the very close of the session, in order to force its approval by the Executive. It should be stated that the bill, as first introduced, contemplated a partisan Commission for the avowed purpose of controlling and dictating the employment of the men and making Mr. Perry a mere servant of the majority; but an enlightened and aroused public sentiment compelled an abandonment of the project, and it resulted in the present measure, which is a mere shadow of the bill as first presented. The purpose of the measure having been discarded, the measure itself should have been abandoned.

The Commission as constituted under this bill is merely a figurehead, with no power for good, and with but a little for evil. It can, if it is so disposed, embarrass and annoy the commissioner—nothing more. It becomes a useless, unnecessary and ornamental body, and should never have been created.

The bill is otherwise objectionable.

The Legislature, while professing the greatest confidence in Commissioner Perry, enacted that he should not appoint a deputy, thus interfering with a matter that should properly have been left to his own discretion and good judgment.

If this provision was intended to reach the individual now occupying the position, whom the majority of the Legislature fancied was politically obnoxious to it, the more manly and courageous course would have been to have mentioned him by name and forbidden his employment, rather than thus to attack him covertly and indirectly, without investigation or opportunity for him to be heard, by depriving his superior officer of the usual and ordinary power which every public official should possess, of appointing a deputy of his own choice to relieve him during his absence, sickness or other emergency.

The bill contains many other unnecessary provisions, which are not specially objectionable, but which seem to have been inserted simply as an excuse for having some legislation.

There was absolutely no necessity for anything except an appropriation, and these provisions referred to were evidently inserted to cover retreat after the project for a partisan commission had been forced to be abandoned.

The bill is also a bundle of absurdities.

It not only provides for an advisory body to 'advise' Mr. Perry, in reference to the construction of the Capitol, but it then proceeds to 'advise' and direct the Advisory Commission in reference to the same subject, expressly limiting the work to the interior of the building, and by restricting its powers in many other respects, thus usurping the natural and ordinary functions which belong to an advisory board, and manifesting a lack of confidence in the ability and capacity of the very board which it creates.

It would seem as though the commission, if it were proper to be created at all, might have been permitted to discharge its duties as seemed wise to its members, uncontrolled by legislative advice and restrictions.

The work should not have been restricted to the interior. The approaches in front of the building should have been completed this year so that the Capitol Park could be laid out, graded and embellished, and thereby have prevented the disgraceful and incomplete appearance which it now presents.

Notwithstanding these many objections to the provisions of this bill, I affix to it my signature. Rather than be the cause of delaying the completion of the Capitol and of depriving worthy workmen of employment on a great public work at a time when private capital is timid, I sign a measure made up almost entirely of crudities and absurdities, trusting that another Legislature, acting with a higher regard for public interest than the present one, will promptly repeal its obnoxious provisions."

June 2.

Memorandum filed with Assembly bill, Chap. 397, amending the charter of Ogdensburg. Approved.

"The approval of this bill is requested by the Member of Assembly and also the Senator who represent the district in which the city of Ogdensburg is situate. The mayor and common council of that city also desire it. It passed the Legislature unanimously, and there are no constitutional questions involved in it.

Under such circumstances I would hardly be justified in interfering to prevent it becoming a law, unless it is grossly objectionable or violates some settled principle or sound policy of the State.

It confers additional powers upon the local authorities in the matter of the construction of sewers. Similar powers have been vested in the authorities of several other cities. If the local authorities abuse their trust the electors can easily displace them.

In a city like Ogdensburg there is no particular danger in conferring upon its officials a broad discretion and enlarged powers without many restrictions.

The amendments contained in this bill are designed to improve the sanitary condition of that city and to facilitate the methods for the accomplishment of such improvement. The State Board of Health recommends the approval of the measure as essential to the preservation of the public health of that city, which is greatly threatened.

If, after a fair trial, the powers conferred are abused, or the act does not prove beneficial to the best interests of the city, it can readily be repealed or amended.

It is asserted that the taxpayers of the city are divided upon the question of the propriety of this measure. I have no means of ascertaining the sentiments of the majority, as petitions both for and against it, numerously signed, have been presented to me. I must rely upon the immediate representatives of the city in the Legislature to properly express the wishes of their constituents, and upon them must mainly rest the responsibility for their local legislation, where only matters of discretion are involved."

June 8.

Veto of Assembly bill entitled "An act to supply the city of Oswego with pure and wholesome water."

" This bill is not the one which was originally presented to the Legislature by the citizens of Oswego.

The original bill was believed to have been framed in accordance with the wishes of a large majority of the people of that city, but it was amended in the Legislature, and in its present shape differs in several important particulars from the original bill. It now contains provisions which are alleged to be of doubtful propriety, as well as unjust towards the city, claimed to have been inserted in the bill at the instance and through the efforts of the Oswego Water Works Company.

The people of that city should be permitted to have whatever beneficial and proper legislation they may require in reference to their water supply that may be demanded by public sentiment. The Executive is desirous of approving this measure, provided its provisions are reasonably satisfactory to the majority of the people, but not, if in its essential features, it is objectionable to them.

The difficulty in the present instance lies in determining what the people want. The local authorities, to wit, the common council, seem to be hopelessly divided upon the propriety and justice of the measure. The mayor, who ought to know the sentiments of the people, is earnestly opposed to it. There does not seem to be any preponderating sentiment in favor of it, so far as it has manifested itself or can be ascertained.

Under such circumstances I ought not to approve of a measure which I cannot be reasonably certain is desired by the citizens for whose benefit it is intended. A bill should not be forced upon them which they do not want.

It is better that legislation upon this subject should be postponed until January next, when another Legislature meets, or until a measure can be agreed upon which shall not only be just and fair towards all interests, but one which surely protects the interests of the people and which can be clearly shown meets with their approval."

June 9.

Veto of Assembly bill entitled "An act to improve the condition and operations of the Sinking Fund of the city of New York."

"It is to be regretted that this bill is not more carefully framed so as to admit of approval.

There seems to be need for some well-considered legislation simplifying the system of finances existing in New York city, and removing some of the alleged fictions pertaining to the sinking fund.

The bill in its present shape is opposed by the mayor, corporation counsel, comptroller and chamberlain of said city.

The bill as originally presented by the committee of the council of reform was not enacted, but it was amended in the Legislature in several particulars, and is now in some respects confessedly defective. The second section, by repealing section 8 of chapter 383 of the Laws of 1878, not only extinguishes the special sinking fund provided for in that section, but absolutely destroys the security of that sinking fund, which was held out to investors by the law itself as an inducement for the investment in the securities of the city, to meet the payment of which such sinking fund was provided.

It was expressly declared in that act that between the city and its creditors — holders of its bonds and stock — there was a contract that the funds and revenues of the city and the funds to be collected from assessments therein mentioned, which by that statute were pledged to the sinking fund for the redemption of the city debt, should be accumulated and applied only to the purposes of such sinking fund, *until all of said debt should be fully redeemed and paid* as therein provided.

If the entire indebtedness of the city incurred by virtue of the provisions of that section were now held by the sinking fund commissioners, there would seem to be no objection to its repeal. But it is shown that five million and twenty-nine thousand dollars of such bonds are now outstanding in the hands of third parties, who have invested in them on the express security of a sinking fund created in accordance with the provisions of the section of the law now sought to be repealed. Such repeal would be an impairment of the obligations of a contract, and is in clear violation of the Constitution.[n]

There should have been a saving clause inserted, protecting such outstanding bonds from the effect of the act, or otherwise properly limiting its operation, and the friends of the bill admit that the omission of such a clause was accidental or unintentional.

It was substantially conceded upon the public hearing upon the bill that this defect renders it impossible of approval, and makes the examination of any further objections to it unnecessary."

June 10.

Veto of Assembly bill entitled "An act to incorporate the New York College of Medicine and Surgery."

" This bill proposes to create a corporation to be known as the ' New York College of Medicine and Surgery,' the purposes of which corporation are declared to be ' to establish and maintain an institution in the city of New York for the instruction of students in medicine, surgery, hygiene and all branches of science and knowledge relating to the art of healing.'

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[n] U. S. Const. art. 1, § 10, clause 1.

I am clearly of the opinion that the Legislature having, by a general act (chapter 184, Laws of 1853), made provision for the organization of such corporations, there exists no adequate reason for the approval of the bill before me. It is special legislation of a character prohibited by section 18, article III of the Constitution. Since the adoption of this amendment to the Constitution it is to be observed that no charter to a college strictly for medical purposes has been granted by the Legislature.

Chapter 184 of the Laws of 1853, amended by chapter 513 of the Laws of 1880, provides that upon application duly made in compliance with certain conditions specified in the law, the Regents of the University of the State of New York 'shall grant a charter.' In the case before me it does not appear that a proper application, complying with the conditions imposed by the existing law of the State, has been made to the Regents. When such an application shall have been made and refused — and that such application will be refused is not assumed — then there will exist the remedy by *mandamus* to compel the Board of Regents to perform the duty imposed upon them as State officers. After these methods of procedure shall have been employed and have failed to accomplish the object desired, it will be ample time to seek the aid of the Legislature, and by a special law to secure to the people of the State those beneficial results which it is to be presumed will follow from the establishment of a corporation of this character.

I do not deem it necessary to discuss the alleged defects to which my attention has been called by the opponents of the bill, but prefer to rest my disapproval solely upon the ground that the bill is needless special legislation of a character many times the subject of Executive veto during the session of the Legislature."

June 10.

Memorandum filed with Senate bill, Chap. 483, taxing collateral inheritances. Approved.

"The principle involved in this bill has been recommended for several years by the State Board of Assessors, and is understood to be favored by the Comptroller.

While I have decided to approve of the bill just as it stands, it may, however, be here suggested that it should perhaps be amended in the future by limiting the inheritances and legacies to be taxed to those of over five thousand dollars in amount or value, thereby preventing the possibility of any hardship being imposed upon persons of limited means receiving small estates.

The proposed method of taxation is a new one in this State, and it seems to be worthy of a fair trial."

This act was sustained in *Re* McPherson (1887), 104 N. Y. 306.

June 11.

Veto of Senate bill entitled "An act to extend and supplement the rights, powers and duties of the New York Arcade Railway Company."

"It is urged by the opponents of this bill, among other things, that it was rushed through the Legislature during the closing hours of the session, in indecent haste and in violation of every legislative right and privilege to which those who sought to oppose it were honestly entitled. An objection of this nature, although not frequently urged before the Executive, is, nevertheless, of great weight. Objections based upon the manner and methods by which an act is passed, while they do not affect its legality, may properly be entertained in considering its fairness and avowed purposes, and sometimes may well be deemed to characterize the whole scheme contemplated by the bill.

It is conceded that the bill before me was not even introduced in the Senate, where it originated, until the latter half of the session, and thereupon, when its opponents applied for a hearing, they were informed that it was not then expected to press the bill, but that if it should afterwards be urged, they would be duly notified and afforded ample opportunity to be heard. The bill was thus allowed to quietly slumber in the Senate Committee on Railroads, until after the date for the final adjournment had been agreed upon, and then it was suddenly brought forward — and only a portion of its opponents being given a few hours' notice of a hearing, a notice wholly inadequate for proper preparation — was speedily rushed through the Senate on Wednesday of the last week of the session, and reached the Assembly on Thursday of that week, where a request for a hearing was denied, and without amendment, debate, or opportunity for discussion, and under the operation of the parliamentary device known as 'the previous question,' it was put through that body the following forenoon about an hour before its adjournment.

Such proceedings, while they do not invalidate the passage of a bill, nevertheless violate all sense of legislative propriety, and bring scandal and disgrace upon the law-making power. The practice of withholding important measures in the interest of private corporations until the last days of the session, and then rushing them through without consideration, debate, amendment or opportunity for scrutiny, but amid confusion and disorder, is a growing evil which must be checked. It affords facilities for corrupt and dishonest legislation; it prevents a candid consideration of measures upon their merits; it opens the door for charges of unfairness, and casts suspicion upon the integrity of legislators.

Citizens whose interests are affected, or are believed to be affected, by legislation proposed in behalf of private corporations, have a just and equitable right to be heard in opposition to such legislation before the proper committees of the two houses. In no other way can such citizens be permitted to urge their grievances and present their arguments before the Legislature. Such a right should be jealously guarded and stoutly maintained. An intentional infringement or deprivation of it should naturally cast suspicion upon the integrity of the legislation enacted in disregard of so essential a prerogative.

This bill concerns the greatest thoroughfare in this country, and involving franchises and privileges of immense worth, affects not only the interests of the city of New York itself, but the interests of thousands of its citizens who are the owners of property of many millions of dollars in value. These citizens, if they so desired, were entitled to a reasonable opportunity to be heard in opposition to the bill. There should have been no undue or improper haste. Full and ample hearings should have been afforded to all sides, and especially to the local authorities and the owners of property affected by the proposed legislation. Opportunity for debate and amendment should have been extended.

The Legislature itself, as well as private corporations, should understand that the citizens of New York city have interests and rights which must be respected.

A bill upon a subject so important as this should be carefully considered, thoroughly discussed, deliberately and honestly acted upon, with full opportunity for modification and amendment. Its passage, under such circumstances, would carry with it a strong probability of merit. It is evident, not only from the conceded facts pertaining to the introduction, progress and final passage, that this bill carries with it no such presumption of merit, but also a bare glance at its provisions shows conclusively that it has not received due and proper consideration at the hands of the Legislature. It fails in several essential particulars to adequately protect the interests of the city or the property of the citizens or the rights of the public. It perpetuates many of the defects which were urged as objections to the same measure one year ago by Governor Cleveland.* These it is unnecessary to reiterate here. The bill cannot now be amended, but must stand or fall as a whole. The objections might have been obviated had either such fair consideration been given to the bill as has been indicated it was entitled to receive, or had the measure been submitted to the Board of Railroad Commissioners for investigation and opinion. That board was created by the State for the very purpose of aiding the Legislature in determining the propriety of railroad legislation, and its services might, with great propriety, be oftener sought, and would, unquestionably, have been particularly valuable in perfecting this measure, involving interests of such great magnitude. Such a course was not pursued, but, on the contrary, the bill seems to have been hastily prepared, speedily progressed, and pressed through the Legislature under the circumstances stated, without consultation with the city authorities or the indorsement of the Railroad Commissioners, or the approval of any public official or body whatever, aside from the hasty action of the Legislature itself.

Under the circumstances stated I cannot approve of this measure.

It is desired also by this action to emphasize my condemnation of the offensive and ill-advised methods invoked in its passage, in the belief that such a course will prove beneficial to future Legislatures, in compelling the introduction of bills in the earlier days of the session, and in securing greater deliberation and enforcing better consideration and respect for public interests and the rights of property owners, while enacting important laws at the instance and for the benefit of private corporations.

**Ante*, vol. 7, p. 1031.

Legislation, instead of being the fair and deliberate expression of the honest convictions of the people's representatives, is fast becoming, under existing practices, a scandalous mockery, and it is a fit time to insist that there should be a return to the legislative methods of earlier and purer days, if bills are expected to receive Executive approval."

June 13.

Veto of the following items in the supply bill, chapter 525.

"'For the payment of the expenses for cartage of Assembly documents to and from the post-office in Albany, during the session of eighteen hundred and eighty-five, to be paid to the parties who rendered the services, the sum of five hundred dollars.'

This item is objected and not approved. The amount appropriated for defraying the contingent expenses of the Assembly is amply sufficient to cover this item, and should be paid therefrom, if at all. This work should be performed by some of the employes of the Assembly as part of their regular duties. There are too many sinecure positions in connection with the Legislature.

'For the payment of the expenses of cartage of Senate documents to and from the post-office in Albany, during the session of eighteen hundred and eighty-five, to be paid to the parties who rendered the services, the sum of three hundred and seventy-five dollars.'

This item is objected to and not approved, for the same reason given concerning the preceding item, making a similar appropriation for the cartage of Assembly documents.

'For the officers and employes of the Legislature of eighteen hundred and eighty-five not exceeding three in number in each house, as may be designated by the presiding officers of the respective houses, to remain after the adjournment of the Legislature to perform duty under the direction of the clerk of each house, respectively, for a period not exceeding ten days, to each one, in such sum not exceeding his legal *per diem* allowance, as the clerk of each house respectively shall certify and apportion out of the sum hereby appropriated, the sum of three hundred and sixty dollars, or so much thereof as may be necessary.'

This item is objected to and not approved. These officers and employes of the Legislature of eighteen hundred and eighty-five have actually been paid for these services, showing conclusively that the amount of money regularly appropriated for legislative expenses has been sufficient and ample.

'For deficiency in appropriations, for expenses of legislative committees, fees of counsel and stenographers engaged therein, and for other contingent expenses of the Legislature, twenty thousand dollars, or so much thereof as may be necessary, to be paid, in the case of legislative committees, on the certificates of the chairmen of the respective committees and of the presiding officers of the respective houses, and in other cases on the certificates of the presiding officers and clerks of the respective houses, and in all cases on the order of the Comptroller.

The Comptroller is hereby directed to adjust the accounts of stenographers who have been heretofore appointed by resolutions of the Senate, at the compensation fixed in the resolutions of the Senate.'

This item is objected to and not approved. The legislative years in which were incurred the deficiencies to be covered by this item are not mentioned. If it is intended for the Legislature of 1885, it is not needed, for there is no such deficiency; if intended for former Legislatures, it should have been so stated. One hundred and thirty-four thousand dollars have been appropriated to meet legislative expenses for the years 1881 to 1885, inclusive, and this should be sufficient. If any just claims are unpaid, they should be so particularized as to render clear the legislative intent.

The last clause of this item is especially objectionable, in that it directs the Comptroller to adjust certain accounts, not at what he shall deem to be a reasonable compensation, but at a certain fixed sum. An auditing officer should be left to exercise his judgment in such cases.

'For the purchase of the collection of zoological and other specimens of the late F. Z. W. Hurst, for the State Museum of Natural History, five thousand dollars, to be paid upon the approval of the director of the State Museum of Natural History and the approval of the Secretary of the Board of Regents.'

This item is objected to and not approved. No provision has been made for appraising or fixing the value of this collection.

If the officials named in this item desire to purchase the collection, they are obliged to pay the full sum of five thousand dollars, though the specimens should be worth a less amount. It is possible that other collections of a similar nature might be purchased for a smaller sum. This expenditure of the public money is deemed unnecessary at this time.

'For the purchase of four geographic, standard time globes, to be placed in the Executive Chamber, the libraries of the Senate and Assembly, and in the State Library room, the sum of twelve hundred dollars.'

This item is objected to and not approved. Such a standard time globe might be properly placed in the State Library. If so, the regular appropriation for the library would cover the expenditure, and the library authorities have power to make such a purchase. With equal propriety, such a globe might be purchased and placed in every office and department in the State government. The Executive Chamber does not require this piece of furniture, and the Senate and Assembly libraries are closed for two-thirds of the year.

'For the Comptroller, for the payment to Mrs. Eliza M. Gallien, widow of Henry Gallien, late Deputy State Comptroller, the sum of four thousand dollars, being the amount of salary of the said Henry Gallien for one year.'

This item is objected to and not approved. It was vetoed by Governor Cleveland in 1884, in the following words:*

'This item is objected to and not approved, for the reason that it grants a gratuity from the treasury of the State, which is neither based upon any equitable claim nor legal consideration. While the sentiment involved in this appropriation is creditable, and while it would be exceedingly pleasant for me to join the Legislature in presenting the sum of money mentioned to the family of an employe of the State who died in its service, having for many years faithfully performed the duties pertaining to a most responsible position, I cannot forget that the money which it is thus proposed to appropriate was drawn from the people by taxation, for the purpose of meeting the necessary expenses of the Government, and that we have not their consent to apply it to other objects. It is further undeniable that during all the time of his service, and up to the very day of his death, Mr. Gallien was paid by the State a liberal and generous salary. I cannot think that this gift is permissible, if due regard is had to the rights of the people, with such an application of business principles to the subject as they are entitled to demand.'

I do not see how I can consistently reverse the decision of Governor Cleveland upon this question.

'For the Comptroller, for the payment to Mrs. Catherine D. Pierson, widow of William W. Pierson, late journal clerk of the Senate, of that portion of the annual salary of such journal clerk which has not been paid, the sum of eight hundred dollars.'

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*Ante, vol. 7, p. 1081.

This item is objected to and not approved. The reasons given for disapproving the preceding item apply to this appropriation.

'For erecting a suitable monument, and iron fence around the same, in the cemetery in the village of Mount Morris, New York, at the grave of William Tall-Chief, a statesman and chief of the Seneca tribe of the Six Nations of Indians, to perpetuate the memory of his services in behalf of the white man, the sum of one thousand dollars, to be expended under the supervision of Myron H. Mills, Hathorn Burt and Hurlburt E. Brown, who are hereby appointed a commission for that purpose.'

This item is objected to and not approved. This Indian, who was a chief of the Seneca nation, was not a remarkable historical character. That he rendered important services is admitted; but these services were not greater than those rendered by the other chiefs and sachems who signed the treaties with Governors Van Buren and Throop.

Private subscription, or the locality in which these chiefs lived, should bear the expense of erecting monuments to the memory of these Indians, and the sum of one hundred dollars, in any event, would be ample to provide a suitable memorial stone.

'For the Comptroller, to be distributed by him among the persons entitled thereto for unpaid services, arising from deficiency in the appropriation, performed by the clerks now in his office in preparing for and making a sale of lands, in eighteen hundred and eighty-one, for arrears of taxes for the years eighteen hundred and seventy-one to eighteen hundred and seventy-six, inclusive, the sum of twenty-four hundred dollars.'

This item is objected to and not approved. This appropriation is intended as extra compensation for certain clerks now employed in the Comptroller's office. Such clerks as were engaged upon these same "unpaid services" and who are not now in the State's employ, would be as properly entitled to this extra compensation. There is a strong objection to paying State employes for alleged extra services. There are emergencies in all private and public offices when employes, who are not over-worked for the greater portion of their time, should give willingly a little extra labor.

'For the Secretary of State, for expenses necessarily incurred by him pursuant to chapter sixty-four of the Laws of eighteen hundred and fifty-five, in making preparation to take the census of eighteen hundred and eighty-five, to be paid upon his voucher, the sum of twelve hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved. These expenses should not have been incurred in the absence of an appropriation for a census. If they were thus incurred, without a specific appropriation, they were contracted in contravention of the statute of 1876, and if they are to be paid at all, they must be paid out of the regular fund provided for the maintenance of the office of the Secretary of State.

'For the State Board of Health, for deficiency in appropriation for sanitary inspectors, compensation and traveling expenses, fifteen thousand dollars.'

This item is objected to and not approved. The books of the Comptroller's office show that no such deficiency exists, and I am, therefore, of the opinion that this appropriation is entirely unnecessary.

'For the State Board of Health, for printing monthly bulletin of mortality and other official circulars, one thousand dollars.'

This item is objected to and not approved. This is not regarded as a necessary expenditure of the public money at the present time. Whatever printing is needed should be paid for out of the liberal appropriation already made for such board.

'For the State Board of Health, for registers, blanks, expressage and laboratory apparatus, five hundred dollars.'

This item is objected to and not approved, for the same reasons as those given in disapproval of the previous item.

'For the Commissioners of Emigration to pay amount of interest due on mortgage on real estate on Ward's Island, now held by the Comptroller in trust for the United States Deposit Fund, from July first, eighteen hundred and eighty-three, twelve thousand dollars.'

This item is objected to and not approved. In 1882 the Comptroller purchased of a New York savings bank a mortgage of two hundred thousand dollars held by that institution on *State property* on Ward's Island, New York harbor. The purchase was made on account of the United States Deposit Fund, a trust held by the State, the principal of which is to be held inviolate by the State. Upon the assumption of the mortgage by the Comptroller, the Commissioners of Emigration refused to pay interest upon the same except by appropriation from the State treasury. No such appropriation being available since July 1, 1883, there has been a default in interest on this trust investment of the State. This appropriation is to provide interest money from the treasury for that purpose. If the State is to pay interest on its own mortgage, it should not only provide the sum now due, but also for the next year's interest up to July 1, 1886. The State has no need of resorting to this questionable method. It receives but two per cent. on its own funds in bank, and it should not be called upon to pay six per cent. on its own mortgage. The Legislature should have met this matter by providing for the discharge of the mortgage by foreclosure through a direct appropriation, and thus ended a financial transaction which will yearly demand appropriations from the treasury, and which must be met eventually in full from that source, both principal and interest.

'For the Commissioners of Emigration, for rebuilding the landing wharf at Castle Garden in the city of New York, ten thousand dollars.'

This item is objected to and not approved. Castle Garden belongs to the city of New York, and is rented by the Commissioners of Emigration at a rental of twelve thousand dollars per annum. It would seem that such repairs as are necessary should be made by the local authorities of that city, or, if it is incumbent upon or proper for the State to do the work, it should be done under the supervision of the Superintendent of Public Works or the State Engineer and Surveyor.

'For an additional assistant librarian in the State Library, for salary, one thousand dollars.'

This item is objected to and not approved. The appointment of an additional assistant librarian, at this time, is not deemed necessary. When the State Library is finally located in its permanent quarters in the Capitol, the advisability of such an appropriation may be properly considered.

'For the publication of one thousand copies of the geological map of the State of New York, accompanying the report of the State Geologist for eighteen hundred and eighty-five, two thousand five hundred dollars, or so much thereof as may be necessary; to be paid on the certificate of the secretary of the Board of Regents, and on the audit of the Comptroller.'

This item is objected to and not approved. No provision is proposed for the correct distribution of these maps. If they are to be published at all by the State, they should be distributed according to some plan prescribed by law, and in such a manner that a copy would surely be found in the principal libraries and educational institutions of the State.

'For the Comptroller for reimbursing the agent of the Comptroller for the amount paid by him for traveling expenses while in the performance of his duties as auction agent, during the years eighteen hundred and eighty-two and eighteen hundred and eighty-three, the sum of one hundred and twelve dollars and fifty-two cents.'

This item is objected to and not approved. I am informed that the man who is to receive this was the assistant auction agent from 1880 to 1884; his salary was one hundred dollars a month. The place was an absolute sinecure, as he never collected more than fifty or a hundred dollars a year, as I am informed. The present Comptroller has abolished the office.

'For the legal representatives of John H. O'Hara, deceased, as a member of Assembly from the county of New York, who died during the session of the Legislature of eighteen hundred and eighty-five, the sum of three hundred and forty dollars, or so much thereof of his annual salary as remains unpaid.'

This item is objected to and not approved. If the State owes the representatives of Mr. O'Hara anything for services, they can be paid upon presentation of proper vouchers to the Comptroller. If, on the other hand, this is intended as a gratuity, it is objectionable for the reasons already given in the items for Mrs. Eliza M. Gallien and Mrs. Catherine D. Pierson.

'For the Commissioners of Navigation of Chautauqua lake, appointed under chapter three hundred and thirty-nine of the laws of eighteen hundred and eighty-four, for removing obstructions in the outlet of said lake, and for establishing buoys at necessary points in said lake, five thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved. It is not regarded as a proper expenditure of the public money, especially at the present period of business depression.

'For the improvement of the navigation of the west branch of the St. Regis river and a large branch or fork of said river called Stony Brook, the sum of seven thousand dollars in clearing and improving the channels of the same, to be expended under the direction of, and authority of Jonah Sanford, Henry J. Flanders and Simeon L. Clark, who are hereby appointed to constitute a board of commissioners to carry into effect the provisions of this item, who shall execute and file in the office of the Comptroller, a bond to the people of the State of New York, in the penal sum of fourteen thousand dollars with sufficient sureties to be approved by said Comptroller, conditioned for the faithful performance of their duties, before entering upon the same. A majority of said commissioners shall constitute a quorum for the transaction of business. Said commissioners shall receive no compensation for their services. In case of death, resignation of any of said commissioners, or refusal to serve as such, such vacancy shall be filled by appointment by the Governor.'

This item is objected to and not approved, for the reason that the work proposed should be done under the supervision of the State Engineer and Surveyor, the Superintendent of Public Works, or some other existing State authority. The system of appointing citizens to do specific work which can be better accomplished under the direction of public officials, is deemed particularly objectionable.

'For services and expenses of removing intruders upon the lands of the St. Regis Indians, in Franklin county, pursuant to chapter two hundred and four of the Laws of eighteen hundred and twenty-one, two hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved, for the reason that an appropriation identically the same has been already made in chapter two hundred and forty of the laws of this year.

'For the repair of the three thoroughfares extending north and south on the Onondaga Indian Reservation, known as the Tully post road, the La Fayette road and the East La Fayette road, and for the repair of the bridges in the same, the sum of two thousand dollars, to be expended under the supervision of Frank A. West and Sumner L. Hunt, who are hereby appointed commissioners for that purpose upon vouchers to be approved by the Comptroller. Before entering upon the discharge of their duties, the said commissioners shall execute to the people of this State a bond to be approved by the Comptroller, for the faithful discharge of their duties, and that they will truly account to the Comptroller for all expenditures made by them as such commissioners. The actual and necessary expenses incurred by such commissioners in the discharge of their duties may be refunded to them by the Comptroller out of the sum herein appropriated.'

This item is objected to and not approved, for the same reasons given for disapproval of the item for the improvement of the navigation of the west branch of the St. Regis river and a large branch of said river called Stony Brook. Moreover, the amount of the bond to be given the State by the commissioners is not specified.

'For the State Normal School at Geneseo, for erecting a suitable building for the school of practice, providing heating and ventilating apparatus, plumbing, gas-fitting, sewers, cisterns, grading, fencing, laying walks, school furniture and for additions to the present building, and alterations of the same, the sum of twelve thousand five hundred dollars, to be expended by the local board of trustees of said Normal School after the plans and specifications have been approved by the Superintendent of Public Instruction, and a contract, with proper sureties, has been made for the completion of the said building and the repairs and improvements contemplated, at a cost not to exceed twenty-five thousand dollars.'

This item is objected to and not approved. The State has already, this year, made appropriations of a very considerable sum for the erection and completion of new normal schools, and I do not deem the need for this particular appropriation so pressing but that it can wait until another year.

'For erecting a suitable building for school purposes, for Union Free School District Number One, of the town of Wilna, Jefferson county, in the place of buildings destroyed by fire in the village of Carthage, in said town, the sum of twenty thousand dollars, to be expended under the direction of the Board of Education upon vouchers to be approved by the Comptroller.'

This item is objected to and not approved. The people of Carthage, on the 20th day of October, 1884, suffered a great misfortune by an unusually destructive fire. Schoolhouses, together with churches, corporation and mercantile buildings and the private homes of their people were destroyed. This item provides for an appropriation by the State to rebuild the Union School. This the State cannot properly do. It is not the province of the State to erect public buildings for local purposes. The moneys of the State can only be legitimately expended for State purposes. The appropriation would be establishing a pernicious precedent, which I cannot inaugurate. If this appropriation is sanctioned, it will be difficult to resist sympathetic appeals from localities which may suffer from similar, even if not so severe, calamities. I am deeply sensible to the appeals of the people of Carthage to the generosity and sympathy of the State, but I am constrained to place myself in full accord with Governor Lucius Robinson upon this subject of public expenditures for private or local purposes, when he said:* 'The functions which we exercise are committed to us as a sacred trust. The government which we control as public officers is not our own; it belongs to those who placed us here. The laws which we enact do not express our will; they are the voice of the people. The money which we handle belongs to them and not to us. We can only take it from them for the legitimate expenses of government. More than this is robbery. Official generosity is official crime.'

'For deficiency in appropriation for the maintenance of convicts sent to penitentiaries, in pursuance of chapter one hundred and fifty-eight of the laws of eighteen hundred and fifty-six, chapter five hundred and eighty-four of the laws of eighteen hundred and sixty-five, chapter six hundred and sixty-seven of the laws of eighteen hundred and sixty-six, chapter five hundred and seventy-four of the laws of eighteen hundred and sixty-nine, chapter two hundred and forty-seven of the laws of eighteen hundred and seventy-four, and chapter five hundred and seventy-one of the laws of eighteen hundred and seventy-five, ten thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved. I learn from the records at the Comptroller's office that no such deficiency exists.

'For printing eight hundred copies of the Clerk's Manual of eighteen hundred and eighty-five, pursuant to concurrent resolution of the Legislature, passed January twenty-ninth, eighteen hundred and eighty-five, four hundred dollars, or so much thereof as may be necessary; to be paid on the certificate of the clerks of the Senate and

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*Ante, vol. 7, p. 315.

Assembly that the same has been properly printed and delivered, and on the audit of the Comptroller.'

This item is objected to and not approved. The contingent fund for legislative expenses is ample to cover such an expense as this.

'For printing one thousand copies of the testimony taken before the Special Committee of the Senate, appointed January ninth, eighteen hundred and eighty-five, to investigate the supply of gas in the city of New York, twelve hundred and fifty-five dollars and seventy-five cents, or so much thereof as may be necessary, to be paid on the certificate of the chairman of the Committee and the president of the Senate, and on the audit of the Comptroller.'

This item is objected to and not approved. The regular number of copies of this Committee's report should be sufficient. These have already been printed and paid for. A concurrent resolution furnishes no authority for incurring any expenditure of the State's money. If authority for such publication is given at all, it should be by a distinct bill.

'For printing and binding, in cloth, one thousand copies of the University Convocation of eighteen hundred and eighty-four, pursuant to concurrent resolution of the Legislature, passed February twelfth, eighteen hundred and eighty-five, six hundred and fifty dollars, or so much thereof as may be necessary, to be paid on the certificate of the secretary of the Board of Regents of the University that the work has been satisfactorily done and delivered, and on the audit of the Comptroller.'

This item is objected to and not approved. The reason for objecting to the preceding item obtains in this case."

June 13.

Veto of Assembly bill, entitled "An act in relation to unpaid taxes, assessments, water rents and rents in Long Island City, and to confirm, levy and collect the same, and to insure a more efficient collection of the same in the future."

"It is with great regret that I feel compelled to withhold my approval from this bill. I accept the statements of the officials of Long Island City that there is much necessity for some legislation concerning the collection of taxes and assessments in that city, and any proper bill, carefully devised and reasonably free from objectionable features, designed to aid in such collection, would cheerfully receive my signature. But I cannot be expected to approve of an objectionable measure, and one containing unjust provisions.

This bill provides, among other things, that the city may not only sell the property of a person or corporation upon which property a tax has been assessed, but that it shall have a "concurrent remedy" by action against the owner of such property to recover such tax. This so far as non-residents are concerned is not only unjust but is believed to be without precedent. If there are any precedents for such improper legislation, I have no hesitation in saying that they ought not to be followed. There is no objection to an action being maintained against any resident person on account of personal taxes, because the city has jurisdiction of his person. He is a part of the local body politic, and properly amenable to such a proceeding, and there may also be some propriety in permitting such resident to be sued for the taxes against his real estate after or without first exhausting such real estate, but it is manifestly unjust to authorize an action to recover personally of a non-resident of the city, taxes against his real estate which he happens to own in that city, whether without or after first exhausting such real estate. Taxes imposed against non-residents are properly so imposed only because of the property itself and are assessed in form solely against the property. There should not exist any remedy against such owner. It is sufficient that the municipality is permitted to sell the entire real estate, and if the city government has conducted its affairs so recklessly, extravagantly or corruptly that the taxes exceed its value, the city should be remediless, so far as any further proceedings against the owner are concerned. An entire confiscation of the property of a non-resident should be deemed a sufficient exercise of the arbitrary power of taxation, without going further and permitting an action to be maintained against the owner personally to recover any deficiency. These are elementary principles of taxation, about which there ought not to be any question. It is difficult to comprehend the wisdom which insisted upon such an extraordinary provision being inserted in this bill.

Every taxpayer in Long Island City would realize the monstrous unfairness of this provision if it should be applied to himself by another municipality. If, for instance, some resident of Long Island City of moderate means should be willed by a relative some real estate in Albany city, and a large and burdensome tax should thereafter be assessed against the property, equal to or in excess of the value of it, and although he might be willing to permit the property to be entirely confiscated to satisfy the tax, he should be sued and a large deficiency recovered against him personally, he could keenly experience the outrageous injustice of such a proceeding and of such legislation as I am asked to sanction by the approval of this bill.

An amendment should have been accepted, striking out this obnoxious clause and the measure used thereby have been freed from one of its most objectionable features; and when the perfecting of the bill was comparatively so easy a task it would seem as though it were the height of folly to have imperiled the final success of a measure containing so many good and desirable features by insisting upon the retention of a clearly offensive provision.

So important a bill as this should have been passed earlier in the session, so that it could have reached the Executive in time for examination and for amendment before the final adjournment. It cannot now be corrected.

There are some other provisions in the bill which are alleged to seriously affect the vested rights of creditors of the city, who hold its certificates of indebtedness known as "improvement certificates."

There seems to be some force in the claim that this bill, by giving the city treasurer power in his discretion to purchase in behalf of the city such lands as may be sold for assessments, at the full amount thereof, with interest, costs, etc., when under the previous laws under which such certificates were issued he had no such discretion, but was absolutely obliged to make such purchase, whereby the whole city virtually became liable therefor,— does to some extent impair the value of such certificates, and may be deemed to impair the obligation of a contract. But I am not prepared to say that such claim on the part of the holders of such certificates is well founded, neither do I dispute it. It becomes unnecessary to determine the point.

The bill is grossly objectionable for the reasons first above stated, and I am compelled to withhold my approval without critically examining it further."

June 13.

Veto of Senate bill, entitled "An act to provide for the compilation and preparation of certain criminal statistics by the Prison Association of New York."

"This bill is objectionable because it seeks to duplicate the labors of a State department and appropriates for this purpose the sum of three thousand five hundred dollars out of the public moneys to a private corporation.

The gathering of such statistical information as is provided for by this bill belongs properly to the Superintendent of State Prisons, and this information, in point of fact, is for the most part gathered annually and reaches the public by means of annual reports to the State Legislature.''

June 13.

Veto of Senate bill, entitled "An act providing for the completion, control and management of the New York and Brooklyn Bridge."

'' It is conceded that this measure was not intended to be passed in its present form. The original fifth section of the bill was stricken out, but several other provisions claimed to have been inserted with sole reference to it, were inadvertently permitted to remain. Serious differences of opinion now exist even among the friends of the bill as to the effect of this unfortunate legislative blunder. The question arises whether the new trustees would have the power to issue bonds to an unlimited amount for any of the purposes specified in the act, or whether the provisions in reference to bonds are nugatory in whole or in part. It is difficult to understand what '' extensions '' are contemplated by the bill, or what powers are actually intended to be conferred upon the trustees named in the bill. It must be admitted that the bill is open to different interpretations, and therefore liable to lead to various complications and much litigation.

An act involving such important interests should be clear and certain in its provisions.

There seems to be need for some proper legislation providing for increasing the facilities and accommodations, especially on the New York side, but the bill cannot be approved in sections, and as it contains serious defects, it must fail as a whole. Although strongly pressed to do otherwise, I must decline to approve of such slipshod legislation.''

June 13.

Veto of Assembly bill, entitled "An act in relation to the office of the clerk of the county of Kings." Also Assembly bill No. 107, in relation to the office of register in Kings county.

"This bill is clearly defective. It changes the system of conducting the office of county clerk from an office sustained by fees collected from persons transacting business with it, to a salaried office to be supported by the county; but there is an entire omission in the bill to fix any definite salary for such official. It says he shall receive a salary which shall not exceed the sum of ten thousand dollars. This omission renders the bill imperfect in my judgment. It is claimed that it is intended that the salary shall be fixed by the board of supervisors, and that this may be done under its general power conferred by another law, to fix salaries not otherwise determined. This is an improper method and is without precedent in this State, so far as the office of county clerk is concerned. In the bill signed by Governor Cleveland, last year, relating to the New York county clerk, the salary was fixed in the law itself. In the Erie county clerk's bill, also passed by the present Legislature, the salary was determined in the bill. The register's office in the city of New York was last year changed to a salaried department, and in the very bill making the change the salary was definitely stated. By the terms of this bill there is no such provision, but the compensation of the county clerk is to depend upon the discretion, fairness or caprice of the board of supervisors. This is highly improper. An official having considerable patronage at his disposal, should not be obliged to depend upon such a body for the determination of his compensation. His compensation should be definitely fixed by law. He should not be subjected to the possibility of improper demands upon him from the body which determines the salary of his office.

Such a power has a tendency to breed corruption and is liable to abuse where it is to be exercised with reference to such an office.

It is unnecessary to further consider the bill. Regarding this defect as vital and material, the bill cannot meet with my approval. It is to be regretted that it was not passed until the closing hours of the session, at a time too late for its return to the Legislature for amendment. I am constantly solicited to sign defective and imperfect bills, but I cannot consistently do so. The responsibility for their failure must remain with the Legislature. Early in the session I urged the necessity of the Legislature's selecting some competent counsel to examine bills before they should be presented to the Executive, in order to perfect and amend them, but the Legislature ignored the suggestion. The main principle involved in this bill is not objected to, and I have indorsed the application of that principle embodied in the Erie county clerk's bill, which I have to-day approved, and which is entirely free from the objections raised to this bill.

For the same reasons I am also compelled to withhold my approval from Assembly bill No. 107, entitled 'An Act in relation to the office of the register of the county of Kings.' "

June 13.

Memorandum filed with Senate bill, Chap. 554, providing means for experiments by Charles T. Harvey in Rapid Transit. Approved.

" The approval of this bill is asked for by ex-Governor Horatio Seymour, and also by the following gentlemen, who have an established reputation in the profession of civil engineering, namely: Thomas C. Clark, Washington A. Roebling, S. H. Sweet, Charles H. Haswell, Egbert L. Viele, Alfred P. Boller and many others.

From papers on file with this bill, and from the report of the legislative committee of this year, it seems that Charles T. Harvey, many years since, was, if not the originator of the method which seemed much to solve the long mooted and important question of rapid transit, at least the perfecter of a plan that was afterward of great utility and in a large measure assisted in giving the present rapid transit facilities to the city of New York.

The money directed to be disbursed under this bill belongs to a special fund accumulated by payments made by the elevated railroads of that city, in pursuance of the original acts authorizing their construction, by which acts the use of said fund was limited to certain purposes, mainly for the repairing of the streets and roadways which it was then thought would be seriously injured by reason of the construction and operation of such railroads. During the years in which they have been operated I am informed it has not been found necessary to expend a dollar of this fund for the purposes contemplated, and it seems probable that none of it will ever be to any extent needed therefor.

The purpose of this bill is to provide means whereby Mr. Harvey can further develop plans for rapid transit, which it is claimed he has already brought to greater perfection; and the approval is urged for that reason, and further, as a matter of justice to one who has been so largely instrumental in giving to that city its present system. It seems to me that there is great force in these reasons, and the language of ex-Governor Seymour clearly states the proposition when he says: 'The city has had almost exclusively the benefit of elevated railroads. The legislative reports and laws show that Mr. Harvey was encouraged to persevere in his efforts to improve that system of transit. I think no one can read these reports without feeling that the honor of the State demands that compensation be made to Mr. Harvey.'

It is universally admitted that increased facilities for rapid transit are imperatively demanded in the city of New York. Personal observation of the means now afforded, and considerable study and attention given to this subject, have convinced me of the inability of the system in its present condition to give the relief needed. Some careful legislation in the interests of the people in the direction indicated is undoubtedly demanded. In the meantime it appears entirely proper that a fund, coming as this does from the income or earnings of the system itself, should be used in its further development and in doing justice to Mr. Harvey, especially as it does not cost the taxpayer of the city of New York a single dollar.

In the hope that this measure will aid in supplying a conceded want of the city of New York, and because of the high personal and professional character of the gentlemen familiar with the subject of, and recommending this legislation, I have decided to approve the bill."

This act was held unconstitutional in People ex rel. Harvey v. Loew (1886) 102 N. Y. 471.

June 13.

Memorandum filed with Assembly bill, Chap. 504, concerning a delegate to the International Prison Congress. Approved.

"The amount of money which this bill permits to be expended seems unnecessarily large, and I have grave doubts whether the State will be benefited by the sending of a delegate to this congress. The demands upon my time have prevented anything but a hasty examination of the subject. Inasmuch as the bill merely authorizes the appointment of a delegate by the Executive, I affix to it my signature, with this official statement: That I reserve the right not to make the appointment, if upon a careful examination I deem it superfluous, and that in case it is deemed wise to send a delegate, the amount of money to be spent by him is to be limited to a proper sum, which shall be much less than the amount appropriated."

June 13.

Memorandum filed with Senate bill, Chap. 507, authorizing the town of Hancock to compromise railroad indebtedness. Approved.

"I do not quite like the phraseology of this bill. Its friends claim, however, that it leaves the exercise of the powers conferred by it within the discretion of the town board. Assuming that view of the bill to be correct, I have, with some reluctance, approved it.

It will leave the compromise of its town bonds within the discretion of the local authorities of the town, who, it is believed, will not act contrary to the wishes of the taxpayers.

The provision with reference to the exemption of the new bonds from taxation, is objectionable. Precedent has been established in other cases for the relief of towns suffering under a burden of railroad taxation, and the precedent is reluctantly followed in this case because the bill cannot now be amended."

June 13.

Memorandum filed with Assembly bill, Chap. 529, for the relief of the Sunday Mercury. Approved.

"I would have preferred that this account should have been referred to the Board of Estimate and Apportionment, and not to a single officer. Had it been a claim for unliquidated damages I should have refused approval to the bill, and insisted that the course referred to should be followed. Inasmuch as this is a claim for liquidated damages, and only authorizes the Comptroller to examine the justice of the claim, and merely authorizes the Board of Estimate and Apportionment to make any appropriation which the Comptroller may deem justly due, I reluctantly give my approval to the measure. There are numerous precedents in the enactments of former Legislatures for this course."

June 13.

Memorandum filed with Assembly bill, Chap. 539, the Brooklyn Elevated Railroad bill. Approved.

"I have approved this bill upon the faith of certain resolutions passed by the Brooklyn Elevated Railroad Company agreeing to charge the sum of five cents only as fares at all hours within the limits of the city of Brooklyn, and which resolutions have this day been filed in the office of the Board of Railroad Commissioners of the State.

I believe that the railroad company will faithfully carry out their resolutions, and that the public will thereby be greatly benefited by this bill. If for any reason they should fail to do so, and the agreement should not be enforceable in the courts by the Railroad Commissioners, the Legislature can easily supply the remedy."

June 15. The omnibus veto included the following bills:

A. 322. Criminal Procedure, Code amending. (Sec. 872, relative to certificates of conviction.)

A. 746. Printing reports of State institutions, etc.

A. 112. Corporations, bankrupt, relative to receivers of.

A. 363. School district officers, amending act relative to election of.

S. 275. Deaf mutes, care and education of, act relative to, amending.

A. 171. Revised Statutes, amending, directing Comptroller to publish detailed statement of all warrants.

A. 149. Supervisors in Monroe and Orleans counties, to fix the compensation of.

A. 508. Owego, village of, relative to electric light for.

S. 329. New York city, Cedar park, discontinuing proceedings relative to.

A. 284. Silver Creek, village of, authorizing trustees to straighten Walnut Creek.

A. 87. Superintendents of the poor, amending act relative to appeals from decisions of.

A. 277. Fulton county, amending act relative to the relief of the poor in.

S. 48. Amending game laws relative to killing of wild fowl and fish.

S. 81. Debtors, assignment of estate of, amending, relative to.

S. 220. Corporations, for manufacturing, etc., purposes, amending chapter 40, Laws of 1848, relative to.

S. —. Rome, city of, amending act incorporating, relative to board of education.

S. 372. Long Island city, repealing section five of act reducing expenses of.

A. 690. Fort Covington, relative to annual meeting of Union Free School District No. 1.

A. 295. Drainage of swamps and other lands, amending Revised Statutes relative to.

A. 414. Lenox, town of, extending boundaries of Union School District No. 25.

A. 757. New York city, board of fire commissioners to appoint deputy inspector of buildings.

S. 284. New York city, amending maps in Twenty-third ward by omitting part of College avenue.

S. 310. Session laws, amending act providing for publication of, in two newspapers in each county.

S. 296. Poor, overseers of, relative to the compensation of.

S. 408. Liberty Normal Institute, amending act incorporating.

A. 131. Mechanicville, providing for construction of lift bridge over Champlain canal in.

A. 234. Notaries Public, providing for additional number of, etc.

A. 495. Water, amending act authorizing villages to furnish pure and wholesome, to the inhabitants thereof.

A. 139. Contracts, requiring public notice to be given of certain State.

A. 72. New York city, consolidation act, amending sections 824 and 829, in reference to Montefiore Home for Invalids and canal boat pier in East river.

A. 202. New York city, comptroller to examine claim of John Donnelly.

A. 624. Newark, village of, providing for erection of canal bridge in.

A. 662. Insurance companies, town, amending act authorizing formation of.

A. 451. Franklin county, lands in, authorizing Commissioners of the Land Office to convey to Robert Schroeder.

A. . Revised Statutes, amending section 78 of part II, chapter 1, title II, article 2, in relation to uses and trusts.

A. 819. Patriotic Tract Society, to incorporate the.

A. 673. New York city, relative to claim of John C. Ham.

A. 475. Cigarettes, to prohibit sale of, to minors under the age of fourteen years..

A. 393. Medical students, to prescribe the preliminary education of.

A. 735. Civil Procedure, Code of, section 757, amending, relative to continuance of suit against estate of party deceased.

A. 283. Brooklyn, city of, amending charter of, in reference to fire department pension fund.

A. 501. Game laws, amending section 23 of chapter 534 of Laws of 1879.

A. 838. New York city, providing for appointment of inspectors of weights and measures in.

A. 59. Firm names, fictitious, amending act to prevent persons from transacting business under.

A. 829. New York city, authorizing the comptroller to examine and audit the claim of John O'Connor.

A. 143. Brooklyn, city of, for the better protection of public parks in.

A. 738. Code of Civil Procedure, amending section 190, defining jurisdiction of Court of Appeals.

A. 770. Brooklyn, city of, repealing section of act exempting from provisions of act authorizing gas-light companies to use electricity instead of gas in lighting street, etc.

A. 163. Insane, amending act relating to care and custody of, etc., in section six, relating to charges upon counties.

A. 706. Corporations, amending act to authorize formation of, for manufacturing, mining, mechanical or chemical purposes.

A. 208. New York city, to authorize the Comptroller to hear and determine the claim of Martha Krenkel, administratrix of Kasmire Krenkel, deceased.

A. 785. Wellsville, village of, legalizing official acts of Brigham Hanks, as police justice of the.

A. 422. Binghamton Asylum for the Chronic Insane, providing for appointment of additional assistants for.

S. 354. Vagrants and other criminals, to authorize courts and magistrates to sentence to hard labor in the county jail.

S. 347. New York city, consolidation act, amending section 1275, relative to salaries of court officers.

S. 209. New York city, authorizing Metropolitan Transit Company to discontinue its main line north of One Hundred and Twenty-fifth street, and change location of bridge across Harlem river.

EXTRAORDINARY SESSION.

May 15. Governor Hill issued the following proclamation convening the Legislature in extraordinary session:

STATE OF NEW YORK:

EXECUTIVE CHAMBER.

Pursuant to the power vested in me by that part of section 4 of article IV of the Constitution, which reads as follows: "The Governor shall have power to convene the Legislature on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration," I hereby convene the Legislature in extraordinary session, at the Capitol in the city of Albany, on the fifteenth day of May, instant, at four o'clock in the afternoon.

And I hereby recommend for the consideration of the Legislature of 1885, in extraordinary session convened, such legislation, and such legislation only, as is required to carry into effect that part of section 4 of article III of the Constitution, which reads as follows: "An enumeration of the inhabitants shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter," which enumeration it is declared is to be taken in order to secure an equitable apportionment of Senators and Members of Assembly for the several counties of the State.

Done at the Capitol in the city of Albany, this
[L. S.] fifteenth day of May, in the year of our Lord
one thousand eight hundred and eighty-five.

DAVID B. HILL.

By the Governor:
WILLIAM G. RICE,
Private Secretary.

May 15. The Legislature met pursuant to the foregoing proclamation, and the Governor transmitted to both houses the following

MESSAGE.

TO THE LEGISLATURE.—Pursuant to the power vested in me by section 4 of article IV of the Constitution, you have been convened in extraordinary session.

For your consideration I recommend such legislation, and such legislation only, as is required to carry into effect that part of section 4 of article III of the Constitution, which reads as follows: 'An enumeration of the inhabitants shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter.'

The Constitution does not require a census. It does require an enumeration of the inhabitants.

The bill providing for such an enumeration can be perfected and passed in a few hours, if the Legislature is so disposed. [See note 18.]

DAVID B. HILL."

The Legislature passed an enumeration bill substantially the same in form as that passed and vetoed at the regular session. The new bill was also vetoed. [See veto of May 27.]

May 22. The extraordinary session adjourned without day.

ACTION ON SECOND ENUMERATION BILL.

May 27.

Veto of Senate bill entitled "An act to amend chapter sixty-four of the Laws of eighteen hundred and fifty-five, entitled 'An act in relation to the census or enumeration of the inhabitants of this State,' as amended by chapter one hundred and eighty-one of the Laws of eighteen hundred and fifty-five, chapter thirty-four of the Laws of eighteen hundred and sixty-five and chapter forty of the Laws of eighteen hundred and seventy-five, and making an appropriation therefor." [See note 18.]

"The approval of this bill will compel an expenditure of over four hundred thousand dollars of the people's money. This in itself is no ground for its rejection, provided its enactment is lawful and its provisions meritorious.

It is conceded that this measure contemplates and authorizes not only an 'enumeration' of the inhabitants of this State, but in addition a census as elaborate and extensive as the federal census of 1880. The power of the Legislature to pass such a measure at a regular session is not disputed, but the question is presented whether it had such power at its recent extraordinary session under the circumstances under which it was convened. The Constitution (art. 4, sec. 4) provides that the Executive may convene the Legislature in extraordinary session, and at such session 'no subject shall be acted upon except such as the Governor may recommend for consideration.' The subject recommended for consideration at the late session was 'such legislation, and such legislation only, as is required to carry into effect that part of section 4 of article 3 of the Constitution,' requiring an enumeration of the inhabitants, which the Constitution declares is to be taken in order to secure an equitable apportionment of Senators and Members of Assembly for the several counties of the State.

A compliance with this provision of the Constitution was an easy matter. The restriction imposed by the Executive upon the action of the Legislature is the restriction of the Constitution itself, which does not demand a census but does require an enumeration. The Legislature had no power, at its extraordinary session, to consider or pass any measure not clearly embraced within the recommendation of the Executive, and which did not exclude every other distinct subject. To a measure providing for an enumeration of the inhabitants it could not attach a provision for the education, support or punishment of such inhabitants, the collection of canal or prison statistics, an appropriation for the canals or prisons, or any other separate and independent subject not directly connected with the object and purpose of the enumeration as declared in the Constitution itself. The Constitution requires an apportionment of the State into Congressional districts,[1] and if the duty of such apportionment had been neglected by the Legislature, and it had been convened in extraordinary session for the enactment of "such legislation, and such legislation only," as was necessary to fulfill that constitutional requirement, it would scarcely be seriously contended that to a measure providing for such apportionment there could constitutionally be included an appropriation for the Capitol, provision for the National Guard or any other distinct legislation. It is equally clear that to the present measure providing for an enumeration there cannot be added provisions for an elaborate and costly census, not necessary for such enumeration, nor in any manner connected with the purpose and object thereof, not contemplated by the Constitution itself. I am sustained in this view by the opinion of the Attorney General as well as that of several eminent lawyers, whose advice I have sought upon this question. The Legislature might have refused arbitrarily to act at all, at the extraordinary session, but having assumed to proceed it was bound to confine its action to such legislation, and that only as was necessary to the performance of its constitutional duty. In its studied effort to evade this plain duty by adding irrelevant features it has made the bill clearly unconstitutional, and has deliberately and unnecessarily rendered approval of its legislation impossible.

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[1] U. S. Const. art. 1, § 2, clause 3; also 14th am.

The bill is objectionable in other respects. It has been asserted that this measure does not materially change the law of 1855, which was the last general act in regard to this subject. The assertion is incorrect. The bill contains vital and radical changes, rendering the defective act of 1855 more objectionable than before, unfair in its discrimination, as well as cumbersome and expensive in its execution.

First. It changes the date for the taking of the census from June to July. This modification is unjust to the large cities of the State, a considerable portion of whose population is absent during that month. The injustice is so manifest, and has been so clearly demonstrated in other communications, that any further reiteration of it is superfluous.

Second. It modifies the Act of 1855, by limiting to two weeks the time for the completion of the census in cities, while in country districts four weeks are allowed. If an enumeration only was to be taken, one week would be ample time in either city or country districts; but this act contemplates an elaborate census, complicated in its details, and is intended to include a collection of mortality, manufacturing and other statistics of no value unless entirely accurate. Four weeks is barely sufficient for such a purpose in any locality, and especially it is true that two weeks' time is entirely inadequate to collect such statistics and to perfect an enumeration in crowded cities. The discrimination against the cities, where the population is the greatest and most difficult of ascertainment, could have no other purpose except to attempt by such undue restriction of time to obtain an inaccurate and defective enumeration, misrepresenting the actual population and thereby obtaining a political advantage. There was no propriety or necessity for this change in the law of 1855, and the discrimination is entirely indefensible.

Third. This bill abolishes the provision of that act which requires the returns of the respective counties to be filed in the offices of clerks of the counties, and directs that no returns shall be filed elsewhere than with the Secretary of State at Albany. All opportunity is removed for citizens to inspect the returns in their own localities, and this valuable safeguard for the detection of error and the prevention of frauds is entirely destroyed. The people are thus compelled to accept as correct the results of the census as announced at the Capitol. There is no means of testing the honesty or accuracy of the enumerators. The returns should remain for the inspection and information of the people near their own homes, as has always been required, and an examination of them elsewhere than at the office of the Secretary of State should have been provided for. Such an innovation upon existing methods is not only without precedent, but without merit.

Fourth. This measure further amends the Act of 1855 by providing for a census which, in its form, extent and scope, is to correspond in all respects, with the federal census of 1880. A compliance with this provision requires the most extensive collection of statistics ever attempted by State authority. The census of 1880 cost the United States Government the sum of three million nine hundred and sixty thousand dollars up to November, 1881, and there are already published ten bulky volumes of its statistics, and the printer's work is not yet finished. The portion of the cost paid by the people of this State is about four hundred and one thousand five hundred dollars.

The census authorized by the Act of 1855, construed in connection with the Act of 1845, required the gathering of statistics of a nature which must be regarded at the present time as in the main unnecessary and valueless.

The present measure in addition to such requirement compels a census so minute, complicated and extensive in its character as to render its cost a burden to the people. As has thus been shown the present measure differs materially from the Act of 1855, so frequently cited as the excuse or justification for the present enactment. It essentially changes, enlarges and amplifies the earlier act. The Legislature seems to have striven laboriously not only to attach a census to an enumeration measure, but to render such census as complicated, elaborate and costly as was possible. Its desire to prevent any enumeration whatever is ill-disguised.

It is believed by the Executive that the people of the State desire nothing more than an enumeration at the present time. They certainly do not desire a census of the proposed character, extent and cost. The last State census was taken in 1875, under the direction of Secretary of State Willers, who, in his report to the Legislature, recommended, with the assent and approval of Governor Tilden, that in the future the decennial census should be confined exclusively to an enumeration of the inhabitants. The recommendation made by the Executive in a special message in January last, and reiterated at every proper opportunity, has been in exact accord with the reform thus suggested in 1875. The census of 1875 cost the State at large for clerk hire, printing and other disbursements, the sum of one hundred and twenty-eight thousand and thirty-seven dollars, and in addition thereto cost the people of the respective counties for enumerators, the sum of two hundred and sixty-three thousand and thirty-four dollars and ninety-nine cents, making a grand total expense of three hundred and ninety-one thousand and seventy-one dollars and ninety-nine cents. Aside from the benefit derived from the enumeration of the inhabitants, all other information was substantially worthless. Statistics to be valuable must be accurate. They are absolutely worse than useless if not accurate, because they are misleading. It is impossible to collect them accurately within the short space of time allowed, and the statistics of the census of 1875 have never been of any practical benefit to a single merchant, farmer, mechanic or laboring man in the State. The State at large pays for the printing of the blanks, the publication of the census, for the compilation of returns and necessary clerk hire, while the respective counties, through their local authorities, pay for the services of the enumerators. This distinction was not known, or else was forgotten, by many who endeavored to discuss this subject in the Legislature. The expenses to the State at large for a mere enumeration cannot exceed ten thousand dollars. To the respective counties the cost would not be over seventy thousand dollars. These facts were demonstrated by carefully prepared figures and estimates presented to the Senate in January last, and have never been successfully or seriously disputed.

No intelligent man who has given the subject any consideration, or inspected the comprehensive schedules required by the federal census, can doubt but what the preparation, compilation and publication of such a census would cost the State at large at least double the amount which the State expended for the purposes of a census in 1875; and that the expenses to the respective counties for enumerators would necessarily exceed the sum expended that year, to wit: the sum of $263,034.99, making a total contemplated expense of about $450,000. It may even greatly exceed that sum, as under this bill the enumerators to be appointed for any district are unlimited, and they can be multiplied without number, according to the discretion of the appointing power.

The fact that it is expected that the State will receive back from the national government one-half of what the government paid its own enumerators in 1880, in consideration of furnishing to the government a copy of our census, is no justification for so large an expenditure as is demanded by this bill. The most that can possibly be received from that source is the sum of ninety-two thousand dollars, as the records of the government show, and it is folly for the State to expend for statistical information over five times what is necessary, in order to receive in return less than one-fourth of the money expended.

It is confidently reasserted that there is no necessity or propriety in the expenditure of a large sum of money for the gathering of statistics, additional to those furnished by the federal census and those compiled by the various departments or bureaus of the State. The law of 1855 was proper enough at the date of its enactment, but the situation is now greatly changed. Between 1855 and 1875 the State created the following bureaus or departments, viz.: The State Board of Health, State Board of Charities, the Department of Public Instruction, the Superintendent of State Prisons, the Banking Department, the Insurance Department, as well as other boards, which are already engaged to a greater or less extent, at great expense, in collecting various kinds of statistical information. Since 1875 there have been established the Department of Public Works, the Board of Railroad Commissioners, the Dairy Commission and the Bureau of Labor Statistics, all employed in like labor and supported at great expense. Further expenditure for the same purpose would be a wicked waste of the people's money, which I shall not permit.

It is to be regretted that the Legislature has persisted in endeavoring to foist upon the State an act providing for the collection of unnecessary and valueless statistics, instead of a simple enumeration as required by the Constitution.[m] The word ' enumeration,' as used in the Constitution, does not necessarily imply a bare count of the inhabitants, but as the context shows may properly be deemed to include the sex, age, citizenship or alienage of the inhabitants, and for the purpose of identification may include their occupation. The Executive has at all times been willing to approve any fair measure that could reasonably be said to comply with this requirement of the Constitution, construed according to the most liberal interpretation. But the Legislature has manifested no disposition to adopt any measure relating to such enumeration which does not embrace provisions for the most costly and comprehensive census possible, and has endeavored to convert a matter purely economical and governmental into a party question. It has deliberately refused to pass an enactment required by the mandatory provisions of the Constitution, in order to pass one not required by that instrument, which the majority well knew contained features which could not meet with approval.

The issue thus presented is a simple one. The Executive insists upon a measure imperatively demanded by the Constitution and which provides for a simple enumeration of the inhabitants and that alone; while the Legislature insists upon a measure enacted ostensibly in fulfillment of a constitutional obligation, containing provisions of an objectionable character, concededly not required or contemplated by the Constitution, and subjecting the taxpayers of the State to a useless net expenditure of over three hundred thousand dollars. The minority of the Legislature with entire unanimity resisted the passage of this bill, and I do not hesitate to withhold my approval from a measure which I firmly believe is not demanded by the best interests of the State. A new Legislature in another year, less prodigal of the people's money and more zealous for the protection of the interests of the taxpayers, can remedy the wrong inflicted by the present one, and can perform the neglected work. A constitutional duty imposed upon the Legislature, but neglected or omitted by it, can legally be performed by its successor, at the first opportunity. The Executive having convened the Legislature in extraordinary session and urged the performance of its duty, can do no more. He has no power to compel the fulfillment by the Legislature of its constitutional obligation.

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[m] Const. 1846, art. 3, § 4.

My duty is discharged when I have reminded the Legislature of its violation of the organic law, and afforded it an opportunity to retrace its steps. Another extraordinary session would undoubtedly leave the situation unchanged. The two great political parties have divided upon the question. One demands obedience to the Constitution; the other seeks to evade it. The Legislature to be elected this fall is competent to pass all the laws necessary for an enumeration and a subsequent reapportionment. The result of that election will show upon which side a majority of the people stand — whether they desire economical obedience to constitutional mandates or a prodigal expenditure of public money."

1886. JANUARY 5. LEGISLATURE. ONE HUNDRED AND NINTH SESSION.

DAVID B. HILL, Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 5, 1886.

TO THE LEGISLATURE.—"The People of the State of New York, represented in Senate and Assembly, do enact as follows," are the vital words made by our Constitution essential to the validity of every legislative enactment.[a] Without this vivifying sentence, no statute law comes into being. Its impressive declaration is the emphatic recognition that power of legislation is in reality vested in the people, and that the acts of the Legislature are but the definite, exact and recorded manifestations of the people's will. As their direct representatives, you have to-day entered upon your duties, and it is their purposes and desires which are to be registered in your acts during the session now begun.

The people whom you represent are far greater in numbers than those of the whole United States at the time when our first State Constitution was adopted, and their interests and activities are a thousand-fold more diversified and extended. It becomes your duty to originate and perfect such laws and take such action, in accordance with the limitations of the Constitution, upon them and other matters committed to your charge as will conduce to the welfare of the people, protect the multitude of their interests, and maintain the blessings of that freedom to secure which, in gratefulness to Almighty God, our State Constitution was established.

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[a] Const. 1846, art. 3, § 14.

No labored analysis of the plan of this constitutional scheme is necessary to demonstrate that it was formulated to promote the consideration by the Legislature of those measures which advance the public good, and was as well intended to prevent undue attention to local and individual concerns. Nevertheless, that the tendency of legislation of recent years has been decidedly in the direction of local and individual interests, is proved by an inspection of our statute books, and, every year, the necessity for well-digested and carefully perfected general laws becomes more apparent.

While your honorable bodies are neither of them in political accord with the Executive, this condition should not retard the advancement of just and beneficial legislation. Rather should it afford such stimulus to both the legislative and executive branches of the government as shall lead to needful and progressive laws.

My desire that this message should be as brief as is consistent with the importance of a communication of this character, renders it necessary to respectfully refer you, for detailed information concerning the work of the departments of the State during the past year, to the particular reports presented to the Legislature concurrently with or shortly following this message. The number and scope of these departments have so increased of late that to devote to each subject but a few words would enlarge an annual message far beyond its proper limits. I, therefore, at once proceed to direct your attention to matters of general consequence, and to make such recommendations as my observation has led me to believe will meet the most pressing needs and increase most greatly the prosperity of those who live within the borders of our Commonwealth.

FINANCES.

Aside from a remnant of the canal debt, a few Indian annuities and the obligation incurred last year on the purchase of the State Reservation at Niagara, the State has no public debt.

The particular debts mentioned are itemized as follows:

Aggregate of canal debt on the 30th day of September, 1885		$8,339,160 00
Aggregate sinking fund		4,663,188 61
Balance of canal debt unprovided for		$3,675,971 39
General fund (Indian annuities)	$122,694 87	
State Reservation at Niagara	1,000,000 00	
		1,222,694 87
Total debt unprovided for		$4,798,666 26

In view of the wealth, resources, and extent of our great State, this debt seems comparatively insignificant.

While this exhibit of the State finances is very gratifying, the gradual increase of the annual expenses demanded for the purposes of the administration of the State government cannot be contemplated with so much satisfaction, and presents a subject for serious consideration.

It was believed that the adoption of the corporation tax law in 1880, which brought a new source of revenue to the treasury, and which now annually contributes to it over $1,500,000, would greatly reduce the rate of taxation, but the expenses of government have also so much increased that no practical relief appears to have been afforded to the taxpayers. There seems to be an ever-increasing demand for the use of all the revenue which every new scheme of taxation produces. The creation by the Legislature during the past few years of so many new departments or bureaus, to subserve special interests, involving vast expenditures on the part of the State, and the rare abolition of unnecessary ones and the increase of numerous appropriations for various purposes, have quickly exhausted the enormous receipts produced by the corporation tax law, and render it advisable that other plans for increasing the revenues of the State be devised. Notwithstanding the fact that, by the action of the Executive, items to the amount of nearly a quarter of a million of dollars were stricken out of the various appropriation bills passed by the last Legislature, the tax rate for 1885–86 is, nevertheless, higher than the average rate for the past nine years.

The following table shows the tax rate for those years and the total amount of taxes levied each year:

FOR FISCAL YEAR COMMENCING OCTOBER 1ST, EACH YEAR.	RATE IN MILLS.	Total.
1877	$3\frac{1}{16}$	$8,726,511 01
1878	$2\frac{9}{10}$	7,941,297 94
1879	$2\frac{862}{1000}$	7,690,416 34
1880	$3\frac{1}{2}$	9,232,542 33
1881	$2\frac{1}{4}$	6,032,829 61
1882	$2\frac{45}{100}$	6,820,022 29
1883	$3\frac{1}{4}$	9,334,836 31
1884	$2\frac{575}{1000}$	7,762,572 78
1885	$2\frac{96}{100}$	9,160,405 11
		$72,701,433 72
Aggregate		$72,701,433 72
Average		8,077,937 08

The taxation for some of these years, and notably that for 1883, can be accounted for by reason of unusual emergencies not annually occurring, but, nevertheless, it is evident that the average rate of taxation is steadily increasing, and requires on the part of the Legislature and all the officials of the State the utmost economy consistent with the welfare and needs of the State. Local taxation is also very severe, and the people in many sections of the State can ill afford to meet their taxes this year.

It should be our study to relieve the people of every unnecessary burden, to cut off every useless expenditure, to limit appropriations to the absolute needs of each department, to abolish all sinecures, and enforce the most stringent economy everywhere. The necessary appropriations for the public works of the State must, of course, be continued and every demand of the State must be properly met, but care should be exercised that no extravagance in any department be permitted.

A plan for the relief of the taxpayers as well as an improvement of the financial system of the State has been suggested, which should receive your thoughtful attention. In substance it provides for the termination of the fund known as the School Fund, and directs that as soon after January 1, 1888, as good judgment may dictate, such funds shall be converted into cash and transferred into the general fund to be thereafter applied in reduction of taxation. The proposition involves an amendment of the Constitution, and insures a prolonged and heavy reduction in the burdens of the people, rendering State taxation for many years merely nominal, and relieving the taxpayers until a period when the State debt shall all be paid, or nearly so, and the present depression and hard times shall have disappeared. This scheme was advocated by the Comptroller of the State in a special communication presented to the Legislature in February last, wherein the reasons for its adoption were ably argued and clearly maintained, and your earnest attention to such communication is particularly requested.[1]

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[1] On the 23th of February, 1885, Comptroller Alfred C. Chapin sent a communication to the Legislature recommending the conversion of the common school fund into cash, and submitted a proposed amendment to article

THE CIVIL SERVICE.

The report of the Civil Service Commission, soon to be submitted, will present the doings of the Commission during the year, and the condition of the public service of the State and of the cities.

The classified service is now believed to embrace all positions in the State service, and in the public service of cities intended by the terms of the statute to be subject to Civil Service methods.

Approximately summarized, the number of classified positions in the State service is 3,988, and in the cities' service 11,191, the total number of classified positions being 15,179. The number of examinations held for the State service during the year is 573, and the whole number of persons examined for that service is 787, of whom 656 were found eligible for appointment. The number of persons examined for the service of cities, so far as shown by reports received, is 3,876, and the number found eligible for appointment is 2,883.

The whole number of persons actually appointed under the rules to classified positions is as follows:

In the State service	524
In the Cities' service	2,201

Reports received from Mayors and other officials of cities seem to give gratifying assurance that the methods of Civil Service are producing good results; that they are steadily improving the character and efficiency of the ser-

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9, section 1, which was introduced the next day by Senator J. Sloat Fassett. By the amendment the common school fund was released from the restriction contained in the existing section, and the fund was to be converted into cash, and applied in reduction of direct taxation. Mr. Chapin said in his communication that by the time the constitutional amendment could take effect, the common school fund would amount to $4,250,000. The proposed amendment was not adopted by either house.

vice, and bringing relief to the public officials from the burdens and hindrances of importunities for place, and the distribution of patronage among eager applicants greatly outnumbering the positions.

The methods of Civil Service have become the policy of the General Government, and of some of the States, and like all genuine reforms, aiming only at good government and the public welfare, this reform seems likely to be universally accepted. The State of New York, always foremost in administrative reforms and the adoption of salutary measures of improvement, has taken the lead in this reform.

The fundamental idea of this reform, that public office is a trust to be exercised solely for the public welfare, and that offices should be filled only by those best qualified for the service to be rendered after their fitness has been ascertained by proper tests, is the corner-stone of popular government. The bestowal of office solely as a reward for partisan service, or as a means of livelihood for the incompetent and thriftless, is an abuse that cannot be tolerated by a free people. It has been found prejudicial to the public welfare and inimical to the spirit of our republican institutions, if not dangerous to their stability. The history of all nations, ancient and modern, teaches the lesson that the undue thirst for office and the unrestrained power of distributing patronage, are the most potent factors in the oppression of the people and the overthrow of popular liberty. The selection of public servants, pursuant to the forms of law and on the ground of merit, instead of by the untrammeled will or caprice of an official, is the safeguard of our institutions and of popular rights. It is, besides, a constant stimulus to the better education and training of the people and a recognition of the utility of our common schools sustained at the public expense, and an incentive for the best men to seek the public service.

This does not conflict with the principle indispensable in a popular government, that heads of departments and others charged with the execution of administrative policies should be men in accord with the chief executive or administrative officer intrusted for the time being with the execution of the popular will expressed through the ballot-box. This principle is vital, and has universal recognition.

The principle of Civil Service reform, as contemplated by the statute, is intended to apply to subordinate official positions which do not involve the exercise of confidential duties, the decision of important matters of discretion or the execution of administrative policy. It is intended to apply solely to those positions which call mainly for clerical ability or other expert qualifications which can be best ascertained by competitive examinations.

The essential points in a well-ordered Civil Service system, as here defined, are that the sanctions of law should control appointments; that the examinations, wherever necessary, should be fair and impartial, entirely practical in their character, and relate solely to the duties of the positions to be filled; that superior merit should be the only ground of selection; and that a sufficient number of names of eligible persons — possibly the entire list — should be certified to an appointing officer to afford a reasonable discretion in selection.

The instrumentalities for the application of Civil Service methods are complete in the State and in the cities. To make the system practically operative, and to secure the full measure of its benefits, it is essential that public officers accept its provisions, and co-operate in good faith in applying them, and this acquiescence is demanded alike by respect for the law and regard for the public interests.

The principle of selection prescribed by the statute is open competition. This is the general rule. Non-competitive examinations are intended by the statute to be the exception and to be allowed only for special reasons arising out of the nature of the service and the peculiar qualifications required.

Open competition rests on the solid basis of equal rights and fair play, and is a principle so thoroughly Democratic in its character, so completely in harmony with the theory of our institutions and the spirit of our people that the method would seem to commend itself to universal approval. When merit alone, ascertained by fair competition, is recognized as the ground of appointment and promotion, the equity and propriety of the mode are self-evident and require no defense.

In deference to a public sentiment formally expressed by the State Conventions of both the great parties, as well as on grounds of justice and of gratitude for meritorious and patriotic services in behalf of national unity and constitutional liberty, early legislative action is invited to an amendment of the Civil Service statute, securing to honorably discharged Union soldiers and sailors more certain and substantial preference in examinations and in certification, appointment and promotion. It is, however, important that the merit principle as the ground of preference among the veterans themselves should be preserved, so that superior fitness shall have its just recognition. The methods of Civil Service will thus become a valuable aid to competent veterans without risks from influence or favoritism.[2]

The necessary appropriations for the continuance of the Commission and the expenses of examinations are recommended.

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[2] Chapter 29, passed March 1, amended the civil service acts by including provisions intended to secure a preference to veterans. They were to be examined, but were to be preferred though graded lower than other applicants. The act also required civil service commissioners to certify for appointment, all veterans not exceeding three who had been found qualified after a competitive examination, and the appointing officer was authorized to select from the three thus certified. See also Constitution of 1894, art. 5, § 9.

TAXATION.

It is believed that the tax laws of the State need a thorough revision. The present system of taxation has existed for years with few changes and comparatively little improvement. Every radical modification seems to have been stoutly resisted, irrespective of its merits or propriety.

It is evident that the personal property of the State does not pay its just proportion of the taxes; and the disparity in the assessed valuation of personal and real property verifies the statement that the statutes governing the appraisement and assessment of personal property are to a great extent defective, and do not reach the great bulk of personalty for the purposes of taxation.

For years the State Assessors have directed public attention to the fact that the personalty of the taxpayers was escaping assessment, yet there has been a shrinkage from 1871 to 1884 (not inclusive) of $107,184,371.00.

The loss has been upon the assessment-rolls alone, for the personal property of the citizens of the State has greatly augmented during this same period. The wealth of the State has increased with its population and resources, and if the personal property does not show an increase upon the assessment-rolls, it may be accounted for in part by a lax administration of existing laws, but it mainly may be attributed to the defects in the laws themselves.

That such laws are inoperative to reach personal estate is evident by the mere statement of the fact that while, according to the last report of the State Assessors, the assessed valuation of the real estate of the State is $2,669,173,011.00, the valuation of the personal estate is only $345,418,361.00, or about one-eighth of the realty.

It is reasonable to believe that if our present tax laws were reformed and placed upon some true and consistent theory, the assessment of the personalty would nearly equal the assessment of the realty, and thereby the present unjust burdens upon real estate would be greatly alleviated. Every citizen has a right to insist that taxation shall be uniform and equal as far as possible, and, while the people are patriotic, and do not object to meeting the just demands of government, they may very properly insist that unjust discriminations should not be permitted. The farm and the workshop in the country should bear their proportion of the public burdens, and so should the bonds, the mortgages, the stocks and other personal property in the great cities of the State.

The theory of our present system of taxation is neither a just nor a consistent one. It permits the indebtedness of an owner of personal property to be deducted from its value, while it permits no such deduction in favor of real estate, even though it is represented by a mortgage, which is a specific lien upon such real estate. It is difficult to discover the wisdom of this discrimination.

If it be the true theory that a person should be taxed only upon what he actually owns, it should be applied to real estate, and the owner should be entitled to a reduction on account of the liens and incumbrances thereon. His actual interest can only be determined by his being allowed such reduction, and if it be proper to allow him the benefit of his indebtedness in the assessment of personal property, there would seem to be great propriety in taking the same course in reference to real estate. Such a change would remedy some of the injustice and inconsistency of our present system.

The practical operation of our present laws is that personal property almost entirely escapes taxation, which adds to the burdens upon real estate, while the latter is taxed without regard to the actual interest of the owner in it. This presents a proper subject for your action, and the suggestion that real and personal property should be placed upon an equal footing for all purposes of taxation, is worthy of most serious consideration.

A considerable decrease in the assessment of personal property may be accounted for because of defects in the present laws, which permit an owner of personal property, immediately before the assessment-rolls are completed each year, to contract debts for the purchase of government bonds or other exempt securities, and such indebtedness then being required to be deducted from his taxable personal property, he escapes taxation not only upon his bonds, but upon an amount of property equal to the indebtedness so contracted. Usually taxable securities or other personal property is pledged as collateral security for the indebtedness so contracted, and after the assessment-rolls are fully completed the exempt securities are surrendered, or sold, or the transaction otherwise terminated, and the previous *status* resumed. Even though this is done for the avowed purpose of evading the law, there seems to be no present adequate remedy. This device has become a convenient and popular avenue for escaping personal taxation, not only with individuals, but I am informed that it is being resorted to by numerous corporations, and that millions of dollars of property are annually escaping their just share of the public burdens. This subject should be honestly and thoroughly investigated by the Legislature.

If the Legislature does not see fit to abolish, in all cases, any deduction for debts, then it is submitted that the law should be amended by providing that such deduction should not include, but should expressly except debts or obligations created by the purchase of any property exempt by law from taxation; or, if this is not advisable, then the party claiming exemption in such cases should be required to make an affidavit showing that the transaction was in good faith, and not for the purpose of evading or escaping taxation, and providing severe penalties for false swearing in relation to such transaction, and, possibly, permitting the assessors in their discretion to pass upon the good faith of such investment, with liberty to reject the claim for exemption if they believe the transaction to be a mere device to evade the law. Some proper legislation upon this subject seems to be imperatively demanded.[3]

ENUMERATION AND APPORTIONMENT.

The Constitution requires that " an enumeration of the *inhabitants* of this State " shall be taken in the year 1855, and at the end of every ten years thereafter.[b] Such an enumeration is declared to be for the purpose of a proper apportionment of Senators and Members of Assembly among the several districts and counties of the State, and for no other purpose.

The Constitution does not require a census. It does not require an enumeration of cattle, horses, sheep, goats or other animals, or the gathering of statistics relating to any other subject than population. Such a census, however, is taken by the General Government every ten years. Our Constitution does require an enumeration of the inhabitants. This constitutional requirement was not fulfilled by the last Legislature, but was intentionally neglected or evaded. No act was passed providing for a simple enumeration,— the passage of such a measure having been studiously avoided,— but an act was twice passed and twice met with Executive disapproval, which required a complicated, elaborate and unnecessary census, which would have cost the people of this State nearly $500,000. Such an outlay of the public money was indefensible. The people did not demand it, nor did they approve of it. Subsequent events have justified the action of the Executive.

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[3] The Senate adopted a resolution on the 9th of February granting leave to the committee on taxation and retrenchment to sit during that session for the purpose of considering the subject of taxation.

On the last day of the session, May 20, the committee was directed to report by bill at the opening of the next session of the Senate. A report of the committee was presented on the 20th of May, 1887, including a bill to carry the committee's recommendations into effect.

[b] Const. 1846, art. 3, § 4.

It was urged, as one excuse for such a measure, that it was expected that the General Government, under certain provisions of its laws, would reimburse the State for a considerable portion of the expense incurred; but it was shown on the other hand that the amount likely to be received from that source would not equal one-fourth of the amount required to be incurred as a condition of securing it; and it has since been established that, aside from the States of Colorado and Nebraska, having a comparatively limited population, no other State in the Union regarded it as wise economy to attempt such a census, and none other has availed itself of that provision of the Federal law.

It is unnecessary at this time to discuss the differences which existed between the last Legislature and the Executive upon this subject. It is sufficient that the constitutional requirement remains unfulfilled, and that it becomes the duty of the present Legislature to perform it. Its power so to do is unquestioned. Judicial authority in this State,* and recent legal decisions in other States, clearly confirm this power. It is recommended that this obligation be faithfully met by the prompt enactment of a proper bill providing for a simple enumeration of the inhabitants. Of the necessity for and the wisdom of such legislation there can be no dispute among fair-minded men. To attempt more than the Constitution requires leads to differences of opinion, and necessarily invites controversies which should be avoided.

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* See Rumsey v. People (1859), 19 N. Y. 41, as to the continuing power of the Legislature to make an apportionment; see also People ex rel. Carter v. Rice (1892), 135 N. Y. 473, as to the continuing duty of the Legislature to take an enumeration.

Last year I recommended to the Legislature that the enumeration should not be taken in the summer months, when large numbers of the people in our cities were absent from their homes, and further suggested the propriety of providing that the enumerators should be appointed by the county clerks of the respective counties. Nothing has since occurred to change my views upon these points, and these recommendations are renewed at the present time.

Coupled with the constitutional command for an enumeration of the inhabitants every ten years, is the further requirement of a reapportionment of the Senate and Assembly districts of the State.[c] The former is, however, a condition precedent to the latter. The sacred right of the people to a just and proper representation in the Legislature is dependent upon the faithful observance of these constitutional obligations, and they can both be easily fulfilled by the present Legislature before its adjournment, if there is an honest endeavor to faithfully discharge them. I assume that the present Legislature will observe its oath to support the Constitution.

A census was taken in 1875, and under the Constitution it became the duty of the Legislature, in 1876, to reapportion the Senate and Assembly districts of the State, but that duty was neglected that year, and by each successive Legislature for three years, and it was not until the year 1879 that an apportionment act was placed upon the statute books. A Federal census was taken in 1880, and it became the duty of the Legislature, in 1881, to reapportion the Congressional districts of the State, but it was neglected for two years, and was not accomplished until the political revolution of the fall of 1882 elected a Legislature which, in 1883, promptly performed its constitutional duty. It is to be hoped that no partisan advantage which may be supposed can be derived from a failure to observe these imperative constitutional obligations will prevent the present Legislature from doing its duty, or induce it to imitate the dangerous example of some of those of the same political faith that have preceded it. As one of my predecessors, in referring to this subject, well said: "Certainly we cannot expect that the people will long continue to observe the ordinary restrictions and requirements of statute law if their representatives who make that law utterly disregard and defy the especial mandates of the Constitution they have solemnly sworn to support."*

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[c] Const. 1846, art. 3, §§ 4, 5.

MUNICIPAL REFORM.

The inauguration of some well-directed effort to improve the local government of the city of New York is worthy of serious consideration. The rapid increase of taxation in that city, the enormous expenses incident to the administration of its affairs, the defective condition of many of the laws applicable to it, and the evils which have manifestly grown up under the abuses of its vast patronage, render an earnest endeavor for the accomplishment of municipal reform one of the demands of the hour.

It is believed that the separation of municipal from State elections, thereby relieving the choice of local officers from the influence of strictly partisan politics, and ensuring the selection of State or National officers free from the embarrassment of local contests, would be a step in the right direction. Prior to the year 1870 the municipal officers in the city of New York had been chosen, not at the general election, but at what was known as the charter election, held for many years in the spring, but more recently in the month of December in each year. In 1870 the law was changed, by providing that the municipal officers should be voted for on the same day of the general election in November, and it has so remained ever since. Public sentiment, both in the city and in the country, recognizing the growing evils of the present system, has strengthened in support of the proposition favoring a return to the ancient system of spring elections for charter officers.

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* *Ante*, vol. 7, p. 165.

The propriety of separating the Bureau of Elections from the Police Department, and providing for the creation of a separate, independent bureau of a non-partisan character, having no connection with, and deriving none of its powers or authority from that department, and requiring that its members and employees shall not be officers or members of the general committee of any political organization, or hold any other office, and conferring the power of their appointment upon such authority and in such manner as to insure the service of independent citizens of the highest character and standing in the community, presents a subject and embraces a proposition eminently worthy of favorable action. The safety of the State depends upon the honesty of our elections, the security of the ballot and the integrity of the official count. The machinery of our elections everywhere should be removed, as far as possible, from active partisan control, and shielded from opportunity for irregularity and fraud.[4]

It is also suggested that the expenses of the government of New York city may be lessened by the abolition of numerous useless offices which have been created, and the reduction of the extravagant salaries paid many of its officials. It is apparent that many officers are receiving a compensation greatly beyond what they actually earn, and which they could not receive from any private employment in which they might engage, thereby burdening the city with unnecessary taxation. The additional inducement of prodigal salaries should not be held out to that already numerous class of people who seek public trusts solely for the sake of the emoluments which they confer.

The charter of the city of New York needs amendment, if not an entire revision. It may well be doubted whether it has been the part of wisdom, or for the best interests of the city, to make so many important offices appointive, rather than elective, as has been the tendency of modern legislation. I have faith in the people and in their capacity for self-government, and believe that they should be trusted with the selection of their own local officials to every reasonable extent. The mayor of the city should, nevertheless, be possessed of sufficient power to make his administration distinctive in its character, and to enable him to carry out his views of municipal policy, and the people could then properly hold him responsible for the good government of the city during his term of office.

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[4] See veto under date of June 15, relative to elections in New York City.

Every session of the Legislature discloses the defects in the present charter, and its inadequacy for the needs of the city. Instead, however, of spasmodic efforts to amend the charter by piece-meal, which have usually resulted abortively, after having occupied the greater portion of the valuable time of the Legislature each and every year, it is suggested that, for the purpose of preparing a new charter, a commission be authorized to be appointed, to consist of a limited number of citizens representing all shades of political opinion, as well as the various interests to be effected, and taken from the different walks in life, and it is believed that the labor of such a body, intelligently and conscientiously performed, would unquestionably meet the approval of the citizens of New York city.

But aside from charter revision, the application for which is necessarily made to the Legislature, and can be accomplished nowhere else, there should be essentially home rule for cities. All matters of discretion, the imposition of local taxes and assessments, the institution of public improvements, the creation of municipal indebtedness, the management and control of streets and the selection of officials, and all other questions of purely local cognizance should, as a general rule, be remitted to the local authorities for their sole action, and should not be interfered with or acted upon by the Legislature. New York city can be more safely and properly governed at home than from Albany. Its citizens have suffered in the past quite as much from bad legislation at the Capitol as they have from mal-administration at home.

Sufficient power and authority should be conferred in a revised charter, or granted by some one comprehensive enactment to the local departments or the legislative branch of the city government, giving to either, as may be most proper, ample jurisdiction over matters rightfully and essentially local in their character, thus relieving the Legislature from any justification or excuse for the constant yearly agitation pertaining to proposed local legislation for New York city.

All the municipalities of our State suffer from too much special legislation. It should be borne in mind that mere change is not reform. The evils of misgovernment cannot all be cured by legislative enactment, or be traced to bad laws. Oftentimes laws, even though regarded as good in themselves, are indifferently or dishonestly executed, and so afford facilities for corruption of every sort.

While desiring to co-operate with the Legislature in every honest and genuine effort to promote the cause of municipal reform, it should be stated that legislation cannot be expected to meet with Executive approval which, although cunningly devised and artfully worded, and loudly proclaimed as reformatory in its character, yet is, in fact, designed for partisan advantage, or the mere substitution of one set of officials for another, the creation of new offices, or the re-distribution of political patronage.

THE SINKING FUND AND PUBLIC IMPROVEMENTS IN NEW YORK CITY.

The amendment of the Constitution, adopted in 1884, limiting the indebtedness permitted to be contracted by cities containing over 100,000 inhabitants to ten per cent of the assessed valuation of their real estate, and limiting the annual rate of taxation to two per cent of the assessed valuation of the real and personal estate of such cities, is claimed to work much embarrassment to the financial interests of New York city.[d] This arises mainly by reason of the peculiar situation of its Sinking Fund and its legal *status* recently declared by judicial decision.* It is asserted by the authorities of New York city that there is great immediate necessity for the expenditure of a very considerable amount of money for the erection of public buildings and other structures in that city. Moneys seem to be required for the erection of school buildings and armories, the furnishing of greater dock facilities and adequate quarters for various departments of the city government. These public improvements cannot well be carried on, under the constitutional limitations mentioned, without some new legislation in relation to the Sinking Fund of the city. It is believed that a scheme can be devised providing a different method of investing some portion of the revenues of the Sinking Fund, whereby the necessary public improvements required by the city can be progressed, and which will not interfere with the integrity of such Sinking Fund, or conflict with any constitutional provision.

I contemplate hereafter presenting a special message to the Legislature setting forth such plan and giving such reasons as may be pertinent for its adoption. The subject is of vital importance to the city of New York, and I trust it will receive at the proper time the consideration it merits.[5]

INDUSTRIAL INTERESTS.

In my message of last year I said as follows:† "Facilities have been afforded by law to enable capital to incorporate and combine for its protection; like facilities should be afforded for the organization of labor." I reiterate the recommendation, and in that connection particularly suggest the propriety of the passage of a general law specially providing for the incorporation of trades unions. It would strengthen the worthy organizations of workingmen, enabling them to more readily enforce their rights among themselves as well as between themselves and the public, and giving to their proceedings, when acting as a body, the sanction of binding and legal authority, and in many other respects the privileges conferred would be beneficial to all concerned, affording an opportunity to relieve such associations from any objectionable features, and greatly increase their usefulness. The Legislature should generously favor whatever conserves the welfare of the toiling masses.

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[d] Const. 1846, art. 8, § 11.

* See Bank for Savings v. Grace (1886), 102 N. Y. 313.

[5] See special message of January 12.

† *Ante*, p. 35.

The subject of child labor should also receive your careful attention. At present there is no law which directly regulates the employment of children, and the necessity for some legislation in reference to it is apparent. The State Medical Society, the New York Society for the Prevention of Cruelty to Children, the State Workingmen's Assembly, and several other reputable organizations have repeatedly requested that some action be taken to protect children of tender years from the demands of selfish and often cruel and exacting taskmasters, but the Legislature has heretofore been deaf to their appeals. It is most desirable that an act be passed abolishing labor by children under fourteen years of age, especially in factories and similar workshops, and properly regulating the employment of all minors.[6]

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[6] Chapter 409, passed May 18, "to regulate the employment of women and children in manufacturing establishments, and to provide for the appointment of inspectors to enforce the same," prohibited employment of women under twenty-one years of age, or of minors under eighteen years, more than sixty hours in any one week in any manufacturing establishment. No child under thirteen years of age could be employed at all in any such establishment, and a record was to be kept of children under 16 so employed.

The differences that arise between employers and employed, concerning the question of wages, almost inevitably lead to pecuniary loss for both parties to the controversy. This loss falls directly and most heavily upon the employed, while, at the same time, by reason of the possibility of such differences, the capital of the employer is exposed to undue risk, and the development of industries is unnaturally limited. Properly understood, there is no conflict between capital and labor. In their great aggregations they are essentially a component part of the progress of every country, and only where they dwell in harmonious relations does true prosperity exist. That this true prosperity may belong to the State of New York is the desire of every patriotic citizen.

Arbitration, as a means of settlement of differences without the use of force, has come to hold a recognized place in the statesmanship of the nations of the world, and I am strongly of the belief that the principle can be applied with equal benefit to the reconcilement of the diverse opinions often held by those who pay and those who are paid for manual labor. The Railroad Commission has concededly corrected abuses in the management of railroad corporations. In many respects it acts substantially as an arbitrator between the citizens of the State and the corporations over which it has a general supervision.

I recommend that provision shall be made by law for a commission which shall have the power to investigate the subject generally, and especially the system of courts or boards of arbitration as they are established in other countries, and shall report to the present, or to some future Legislature, such a law as is necessary to secure the benefits of the system of arbitration to those interested in the

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The Governor was authorized to appoint a factory inspector, and an assistant to enforce the provisions of the act. This subject was afterward included in the Labor Law, L. 1897, chapter 415. See also the compulsory education law of 1894, chapter 671, and amendments.

advancement of the industries of this State. The progress that this principle has made is conspicuously illustrated by the recent selection of the Honorable Allen G. Thurman as arbitrator in the matter of differences arising in relation to wages in our neighboring State of Ohio.

It is believed that, with proper attention to the subject, a system can be perfected in this State, whereby labor differences can be amicably adjusted, especially as between corporations and those whom they employ. The subject is of great moment, and it increases in importance as the country progresses. It concerns largely the security of the public peace and the welfare of workingmen, and should receive the earnest and thoughtful consideration of the Legislature.[7]

STATE PRISONS.

The problem of the satisfactory employment of prison labor still remains unsolved. The Legislature during the past two years having failed to provide any new or distinct plan as a substitute for the contract system of labor, the Superintendent of State Prisons, as contracts have expired from time to time, has employed the convicts upon State account, under the authority of previously existing statutes, claimed to be sufficient for that purpose. Such employment has been unrestricted as to the industries carried on, and as to the number of convicts employed in any one industry, and the management has been such that, so far as injurious competition with outside labor is concerned, nearly all the evils of the contract system have been perpetuated. Instead of diversifying to a reasonable extent the number of trades carried on, and limiting and equalizing the number of convicts to be employed in any one industry, and properly regulating the sale of prison products so as to render competition with honest labor less harmful, the present Superintendent of State Prisons, acting under the vast discretionary power with which he appears to be vested, having in view, in behalf of the State, pecuniary considerations only, in the absence of legislative restrictions, seems to be pursuing directly the opposite policy.

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[7] An arbitration law was passed at this session, 1886, chapter 410 (May 18). It provided for a local board of arbitrators to hear and determine the disputes between employers and employees. The act created a State Board of Arbitration to be composed of three members appointed by the Governor and Senate. Provision was made for appeals from local boards to the State Board.

Some wise and judicious legislation upon this subject is imperatively demanded. There should be established a State policy or system of convict employment which shall be permanent in its character, the principal features of which should be regulated by law, leaving little to the discretion of officials, and which should not only aim to make our penal institutions self-supporting, and to avoid keeping prisoners in idleness, but which should provide, as far as possible, against unnecessary interference with outside industrial interests.

No reasonable person desires the prisoners kept in idleness. They should be compelled to work, and it is desirable that their support should not be permitted to become a burden upon the taxpayers, while, at the same time, honest labor should not be subjected to injurious competition with convict labor, so far as it can reasonably be avoided, and these considerations should be kept constantly in view in whatever system the Legislature, in its wisdom, may see fit to adopt or continue.

There should be no attempt to embarrass the State account system, or any other plan, by the withholding of the necessary appropriations for its successful management. Such a course is prejudicial to the State, and its object is transparent. Yet the Legislature of last year cannot escape criticism in this regard, because, notwithstanding that on the fourth day of May last its attention was called to the fact that there were 375 idle convicts at Auburn that could be employed at productive labor on State account if the Legislature would provide adequate means for the purchase of the necessary material and machinery, it nevertheless deliberately adjourned without making such provision for their employment, and they have, therefore, been practically idle during the greater portion of the year. But notwithstanding such discouraging and embarrassing circumstances, under which the prisons have been obliged to be conducted, the report of the Superintendent of State Prisons shows that their earnings during the past year have actually exceeded their expenditures, and they have realized a net profit to the State of $3,441.44.

The system of "State account," under which the prisons are at present conducted (excepting where existing contracts have not expired), should be given a fair, impartial and further trial, unless a better and less objectionable system can be devised. The difficulty heretofore encountered by the Legislature in agreeing upon any new or other system, would seem to render it more expedient to endeavor to perfect the present one as far as possible, rather than enter upon any doubtful experiment. But, even in the event of such continuance, an act should be passed providing for the diversification and designation of the number of trades to be carried on, selecting those which will least conflict with outside labor, as well as limiting the number of convicts to be employed in any one industry, and directing that the prison products should not be sold for less than market prices, under such reasonable rules and regulations as may be prescribed. What the State most needs is a settled policy upon this subject. The grievances which unquestionably exist should be remedied by prompt legislation.

It would be unwise to attempt the restoration of the contract system or any system that is equivalent to it. The people of the State three years ago expressed their disapprobation of it when the question was fairly submitted to them at the polls, and their verdict must be respected.[8]

ABOLITION OF UNNECESSARY OFFICES AND CONCENTRATION OF OFFICIAL RESPONSIBILITY.

Board of Regents.

Shortly after the close of the Revolutionary War a scheme was conceived for founding in this State a university, to be organized on the model of existing European universities, but modified in character to adapt it to the changed conditions of our political institutions. The plan took shape in two statutes passed in 1784, by which King's College, in the city of New York, was taken as the foundation on which to erect and maintain the university superstructure under the auspices of the State.

By these statutes the name of King's College was changed to Columbia College; its old board of management abolished; its corporate franchises and property transferred to a new board of managers, created under the corporate name of "The Regents of the University of the State of New York," consisting of sixty-five members, with provision for further increase in its number. This new board was empowered to found, endow and control schools and colleges throughout the State, and unite them to the University, and a plan for the gradual absorption of the property of certain kinds of schools by the Regents was provided for. Powers supposed to be adequate were conferred on the board for organizing, maintaining and governing this magnificent educational enterprise. But the experience of three years proved the scheme to be impracticable, and in 1787 another statute was passed, by which all the old chartered rights of King's College were confirmed and restored to that corporation, under the name of Columbia College, and its property, of which it had been deprived by legislation of doubtful constitutionality, was re-vested in its board of trustees. The Regents, however, were left in being, their number reduced to twenty-one, with certain visitorial and other limited powers, but dissevered from all actual management or ownership in the estate of any college or school. Thus shorn of their material resources and of all power to carry out the purpose of their original organization, they have remained, from that time to the present, the Regents of a university which has in fact no existence.

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[8] Chapter 432, passed May 20, created a prison labor reform commission "for the purpose of investigating how best to employ the convicts, confined in the several prisons, penitentiaries and reformatories of this State other than by the contract system, and what improvements in the commitment, custody, employment, management and discipline of convicts should be adopted," and to regulate the employment of convict labor pending such investigation.

The commission was to be composed of three persons appointed by the Governor and Senate, and was to hold office until the 1st of June, 1887. Pending the investigation the act directed that the State account system should be the only one in use in penal institutions, except as to existing contracts; but if the public account system was deemed impracticable the superintendent of prisons might, with the governor's approval, provide for convict labor on the piece price plan.

At present the board consists of twenty-three members, including, as *ex-officio* members, the Governor, Lieutenant-Governor, Secretary of State and Superintendent of Public Instruction. Their principal functions are to visit and inspect colleges and academies, and to report thereon annually to the Legislature; to confer such honorary degrees as European universities usually confer; to approve the incorporation of colleges and academies; to have the care of the State Library, appoint its librarian and make rules for the use of the books; to have the care of the State Museum of Natural History; to establish and regulate the Regents' examinations and teachers' classes in certain academies and academic departments of union free schools, and to distribute to such academies and departments the money annually appropriated for the purpose from the Literature and United States Deposit Funds.

The visitations and inspections referred to are of rare occurrence, data for the Regents' annual reports on the colleges and academies being furnished through reports from these institutions to the Regents. The power to confer honorary degrees is usually and appropriately exercised by the colleges and universities, and such testimonials thus granted are held in a certain esteem, but as the Regents are generally regarded as a purely ornamental body, and membership a sort of pleasant retreat for respectable gentlemen of literary tendencies, the degrees conferred by them lack the essential value in the public mind which attaches to degrees conferred by real institutions of learning. Few new colleges or academies are instituted, and those could well be incorporated under general laws. The State Librarian is amply qualified to perform all the duties pertaining to the State Library, and the director of the State Museum of Natural History is quite competent to perform the duties relating to that institution. All the practical work of organizing and supervising what is called the Regents' examinations and the teachers' classes, as well as most of the other work supposed to be done by the Regents, is already excellently well done by the secretary of the Regents and his assistants.

I think there is no necessity for the official existence of the Board of Regents. Its corporate name is deceptive and misleading. Its powers and duties can be intrusted to other and appropriate hands without detriment to the public interests, thereby saving to the State the annual expense of its maintenance and dispensing with the anomaly of a two-headed educational system and the confusion of a divided and sometimes conflicting superintendence in the same public schools.

With the growth of our public school system the Legislature wisely established a Department of Public Instruction, united in its Superintendent ample power and an undivided responsibility, and invested his office with all the organization and machinery necessary for an efficient supervision and administration of the school system of the State.

I recommend that the Board of Regents be abolished; that its powers and duties relating to the schools be transferred to the Department of Public Instruction, and that its other powers and duties necessary to be provided for be transferred to other appropriate departments and offices already established and maintained by the State.[9]

State Board of Charities.

For many years public sentiment seemed to favor the creation of State boards or commissions for the transaction of many branches of the public business of the State. Such boards consisted of divers numbers of persons, from three to fifteen, and upwards.

In 1867 the Legislature created a body called the "Board of State Commissioners of Public Charities," consisting of eight persons, one residing in each judicial district. Such Board was vested, among other things, with general power to inquire into the charitable institutions of the State, their condition and management, to visit them once in each year, and to annually report to the Legislature the result of their investigations, with such recommendations as they may deem proper. Their visitorial power, however, it was provided by statute, could be exercised by "some one of the Commissioners." In 1873 the Legislature changed the name of this Board to that of "The State Board of Charities," and increased its members by adding one from the county of Kings and two from New York, and at the same time created an officer to be called "The State Commissioner in Lunacy," who should be, *ex-officio*, a member of the State Board of Charities, and receive an annual salary of $4,000.00 and traveling expenses, who should visit the asylums of the State, and report thereon to the State Board of Charities. The expenses of this department have steadily increased, and they now amount to about $15,000.00 annually, including the compensation and expenses of the Commissioner in Lunacy.

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[9] The university was not abolished. The statutes relating to this department of education were revised in 1889, chapter 529, and in 1892 a new university law was enacted, chapter 378. The university was perpetuated in the Constitution of 1894, article 9, section 2. The same Constitution, article 9, section 1, required the Legislature to maintain a system of free common schools. An act passed in 1904, chapter 40, provided for the consolidation of the two departments.

It is submitted that the best interests of the State will be subserved by the abolition of this entire Board (including the Commissioner in Lunacy) and the creation of a single-headed department and an official to be known as the "Commissioner of Charities," who shall be vested with substantially all the duties now exercised by such board, as well as those performed by the Commissioner in Lunacy.

A board consisting of eleven persons (aside from its *ex-officio* members), scattered in various parts of the State, and which only occasionally meets, is a cumbersome and unwieldy body. It cannot perform its duties as efficiently or satisfactorily as a single responsible head. Its functions cannot be discharged as economically or expeditiously as when in the hands of one controlling executive officer.

The proposed change is directly in line with the expressed sentiments of the people upon similar matters. The people, a few years ago, voted in favor of the abolition of the Board of Canal Commissioners and the Board of State Prison Inspectors, and the substitution in their stead of single officials known as the Superintendent of State Prisons and the Superintendent of Public Works, who have sole charge and management of the State prisons and canals, respectively. The result has been acceptable to the people and beneficial in every respect. Governor

Robinson, in his annual message to the Legislature in 1879, speaking of this change, said:* "The administration of the affairs of the canal and of the State prisons, under the new systems, through single officials and responsible heads, exhibits the most satisfactory results. No reformation in State affairs and finance was ever more thorough and complete."

This is an appropriate time for the adoption of a new system. The expenses of our charitable institutions are annually increasing with astounding rapidity, and these institutions need the constant watchful care of an alert and energetic official whose time and talents can be wholly devoted to the State.[10]

STATE BOARD OF HEALTH.

In 1880 the Legislature created a State Board of Health, and conferred on it certain powers and duties which were principally advisory, rather than executive or administrative. Since then, additional powers have been conferred, particularly the enforcement of the laws to prevent the adulteration of food and drugs. The Board consists of ten members, namely, three Health Commissioners, appointed by the Governor, three representatives of city boards of health, three *ex-officio* members,—the Attorney General, the Director of the State Survey, and the Health Officer of the Port of New York,—and a secretary, elected by the Board. The members receive no compensation except traveling expenses, but the secretary receives a salary of three thousand dollars, and is made by law the principal executive officer of the Board, and has an office staff of six or more employees.

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* *Ante*, vol. 7, p. 273.

[10] The Constitution of 1894, article 8, section 11, required the Legislature to provide for a State Board of Charities and a State Commission in Lunacy. The State Board of Charities was reorganized in 1895, chapter 771, and the whole subject was revised and included in the State Charities law of 1896, chapter 546.

The construction of the Board seems incongruous and peculiar. It is difficult to discover any adequate reason why the Director of the State Survey should be a permanent member, or why the representatives of local boards of health in three cities should be selected to make up a State Board, rather than representatives of the whole State, or from all the cities of the State.

The expenses of this bureau have rapidly increased, and the entire appropriations available for its maintenance and use for the present fiscal year amount to $33,000.00 or thereabouts.

When this Board was first contemplated in 1877, Governor Robinson, in reluctantly suggesting it, said:* "I am assured that it is not intended that any expense shall be incurred by the State beyond a moderate salary for the secretary of the proposed board."

The propriety of some State authority having the same powers as the State Board of Health, and even greater, is not disputed, but it is believed that such powers can be more economically and efficiently exercised if conferred upon a single individual, rather than upon a board of ten persons who only meet at long intervals, are engrossed in their own business, and are illy adapted for any great emergency. I believe that the Board of Health should be abolished, and its powers vested in a single responsible official, to be known as the "Health Commissioner" of the State, who would not be a mere secretary or statistician, but one competent to assume sole general charge of the preservation of the public health, and give personal direction to whatever is proper to be done concerning it. This official should be as potential and responsible in his department as the other officials in the various other single-headed departments of the State are in theirs.

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* *Ante,* vol. 7, p. 14.

It perhaps should be stated that the recommendation for the abolition of this Board and that of the Board of Charities is not intended as any reflection upon individual members of either Board, or upon the manner in which they have discharged their duties, but the evils sought to be remedied are inherent in the system itself, which I believe should be superseded in the manner I have indicated.[11]

SURVEYS.

The office of State Engineer and Surveyor is one created by the Constitution itself.[e] The evident theory of the establishment of this office was to create a department having complete jurisdiction over all engineering and surveying subjects in which the State is concerned. The practice inconsiderately adopted by the Legislature a few years ago of establishing independent commissions or bureaus to conduct surveys for the State, seems prejudicial to the dignity of this constitutional office and detrimental to a simple and efficient administration of this branch of the public service. It seems clear that the State has not for some years past derived the full benefit for which this department of the State government was created, in consequence of the invasion of the province designed for it under the Constitution and the statutes, by the sundry commissions and bureaus which, it is believed, have been unwisely formed by the action of the Legislature.

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[11] The public health law of 1893, chapter 661, provided for a State Board of Health consisting of nine members, three of whom were to be appointed by the Governor and Senate, and were to be commissioners of health. The Attorney General, the State Engineer and the Health Officer of the port of New York were to be *ex officio* members of the Board. The Governor was authorized to appoint three other members of the board, one of whom was to be a New York city health commissioner, and the other two were to be members or former members of boards of health of other cities.

An amendment to the Public Health law in 1901, chapter 29, created a state department of health, and the office of commissioner of health.

L. 1893, chapter 661, the public health law, was sustained in Crossman v. Lurman (1901), 57 App. Div. 393, aff'd (1902), 171 N. Y. 329, and (1903), 192 U. S. 189 (adulteration); *Re* Walters (1895), 84 Hun, 457; Viemeister v. White (1904), 179 N. Y. 235 (vaccination of school children).

L. 1893, chapter 661, § 20, was held unconstitutional in People ex rel. Bush v. Houghton, 182 N. Y. 301.

L. 1895, chapter 398, amending L. 1893, chapter 661, sections 140, 153, was sustained in Hawker v. New York (1897), 170 U. S. 189, aff'g 152 N. Y. 234 (practice of medicine).

[e] Const. 1846, art. 5, § 2.

Within the last ten years more than $330,000 has been expended under the supervision of such independent bureaus and commissions for work of an engineering character, a very considerable part of which was paid on account of professional supervision, such as the State Engineer should give to any and all public works and surveys of the State. About $100,000 of this sum was appropriated for the improvement of streams, the construction of bridges, special surveys and works of drainage to be done, determined or supervised by the Board of Health or by commissioners named for the purpose. The interest of the State obviously requires that work of this nature should have competent engineering supervision, and that it should be given by the responsible head of the State engineering department. The remaining $230,000 has been expended in nearly equal proportions upon the State survey and the Adirondack survey. If these surveys are to be continued, upon the propriety of which I do not now express any opinion, they should be continued under the general jurisdiction of the State Engineer and Surveyor's office, and not otherwise. If necessary, they can be conducted under bureaus to be established in that department, and the State Engineer and Surveyor can be authorized to continue or employ the requisite experts and professional skill essential for the proper performance of such work. There should even in that event be some limit prescribed for the expense proposed to be incurred, and some time fixed for the completion of the undertaking. These surveys, in the absence of appropriations, being now practically defunct, the acts creating them should be repealed or the offices distinctly abolished, and the maps and results of these surveys should be directed to be deposited in the office of the State Engineer and Surveyor, which is the legal, and should be the actual depository of all State engineering records, in order that they may be accessible to the people of the State.

Governor Cleveland, in his annual message of 1884, in speaking of the State Survey, said:[*] "In my judgment this survey, and any others of a like character that are to be made for public benefit, should be prosecuted under the direction of the State Engineer and Surveyor, and the results constitute public records in his office." I concur in this opinion, and believe that the State administration will be rendered more economical and be simplified and improved if the Legislature will entrust to the constitutional State officers all the State business which comes fairly and legitimately within the scope of their respective departments.[12]

A CONSTITUTIONAL CONVENTION.

The Constitution provides that at the general election to be held in the year 1866, and in each twentieth year thereafter, the question "Shall there be a convention to revise the Constitution and amend the same," shall be decided by the electors of the State.[f] That question must, therefore, be passed upon at the election next fall, and it becomes the duty of the present Legislature to pass a suitable enactment providing for its proper submission to the people. It is difficult to anticipate what the temper of the people may be in respect to the necessity of another constitutional convention. It may well be doubted whether it will be favored, owing to the expense incident to its holding and the improbability of its work in the end being acceptable to the people.

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[*] *Ante*, vol. 7, p. 988.

[12] Chapter 414, passed May 18, 1886, required the commissioners of the State Survey to perfect and complete the records and computations of the State survey, and file the same in the office of the State Engineer and Surveyor. The act appropriated $7,000, but no part of this sum could be used except upon the certificate of the State Engineer and Surveyor that the work could be completed within the appropriation.

[f] Const. 1846, art. 13, § 2.

It may be observed that the pendency of this question does not affect or conflict with the other provisions of the Constitution relating to its amendment, and any proper constitutional amendment that ought to be adopted should not be delayed to await the uncertain result of such convention, but may and should be progressed during the present session.[13]

RELIGIOUS LIBERTY.

I reiterate the recommendation contained in my previous annual message in favor of such wise and judicious legislation as may be necessary to effectually and impartially enforce that provision of the Constitution which declares that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind."[z]

The duty of the Legislature to enforce this constitutional guaranty of religious liberty by appropriate legislation, whereby all just complaints which have arisen in regard to its violation in some of the penal and charitable institutions of our State may be effectually remedied, is clear and admits of no discussion. It is to be hoped that such proper action may be taken as upon a thorough investigation of the subject may seem to be justly demanded.[14]

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[13] The question of holding a constitutional convention was, by chapter 60, passed March 17, submitted to the people at the general election in 1886, and answered in the affirmative by a vote of 574,993 to 30,766. The convention was held in 1894.

[z] Const. 1846, art. 1, § 3.

[14] See 1885, note 7, *ante*, p. 25 and 1892, chapter 396.

LIMITATION OF THE POWER OF CORPORATIONS TO ISSUE STOCK AND BONDS.

Corporations organized under the laws of this State, with few exceptions, have the power of issuing shares of stock for less than their par value. The result is that the aggregate amount of shares of corporations which avail themselves of this power, represents a much greater sum than the property of the corporations cost, or is worth. If dividends are paid upon shares so issued, rates must be charged greatly exceeding rates necessary to be charged to pay like dividends upon the capital actually invested in the corporations. Shares so issued and purchased by investors are frequently found not to represent values, and to be worthless.

With few exceptions there is no limit to the amount of bonds which corporations organized under the laws of this State may issue. There being no limit upon the amount of bonds, or upon the price at which they may be sold, the interests of shareholders, and also of bondholders, are often rendered of little value by issues of bonds exceeding the value of the property of the corporation.

Some legislation seems necessary to remedy these evils, and it is believed that a statute prohibiting the issue of shares of stock except upon the receipt by the corporation of their par value in cash, and prohibiting the issue of bonds in excess of the amount of the capital of the corporation, paid in cash, would tend to relieve the public from excessive charges, and preserve the interests of those who have become the owners, in good faith and for value, of the shares or bonds of corporations, and would remove one of the causes of financial disturbance and depression in business. No attempt should be made to affect vested interests, or stocks or bonds already issued, but the statute should be applicable only to future issues.

SPEEDY ENFORCEMENT OF CRIMINAL LAW.

Your attention is called to the condition of the laws for the conviction and punishment of persons guilty of murder in the first degree. The long delay which in almost every instance elapses between the conviction of the criminal and his execution, has long been a scandal upon the administration of justice, and the opportunities afforded for such delay under the new Code of Criminal Procedure have aggravated it, and render some changes advisable which would result in greater respect for the law and swifter punishment for murder.

Under existing law, two appeals after conviction are not only possible, but usually resorted to in every case, one to the General Term of the Supreme Court, and, if the judgment is affirmed, a further one to the Court of Appeals. There need be no merits in the appeal, and no judge need certify to its propriety, but the mere serving of a notice of appeal operates as a stay of proceedings. The law further requires that the day of execution must not be less than four nor more than eight weeks after the sentence and hence it happens that a criminal may be convicted on a certain date and sentenced to death eight weeks thereafter, but upon the day set for execution his attorney may serve a notice of appeal, which prevents it. The appeal is heard at the General Term, which may not sit until after an interval of several months, when the judgment may be reaffirmed and a second sentence of death may be passed upon the defendant, to be inflicted after the lapse of eight weeks, but upon the latter day the defendant's attorney may serve another notice of appeal, which also acts as a stay of proceedings, and after another interval of several months the case finally reaches the Court of Appeals, when, if the judgment is affirmed, a third sentence is pronounced, to be enforced two months thereafter, and at last the criminal is brought to justice.

However strenuously the district attorney may labor to have swift justice meted out to murderers, the law itself makes this an impossibility, and intervals of one or two years between conviction and punishment are the rule, and not the exception.

It will be conceded that whatever merit there may be in capital punishment, is almost entirely lost by delay, and public discontent with the results of the present system, is great and growing.

I recommend that the law be changed by dispensing with so many appeals in such cases, and providing for an appeal which may be direct from the Oyer and Terminer to the Court of Appeals. The judgment-roll and the stenographer's minutes should constitute the case and exceptions, and the expense of printing should be made a county charge. With these changes in the law effected, not only will the present protracted delay in the punishment of the guilty murderer be avoided, and a great expense to the county saved, but the rights of the accused will be adequately protected, and the poor, as well as the rich, will be enabled to have their cases passed upon in the first instance by the court of last resort.

A bill embodying these suggestions unanimously passed the Senate last year, but failed in the Assembly because it was not reached.[15]

REGISTRATION IN BROOKLYN.

The object of all registration laws is, or should be, to provide a reasonable method or means of ascertaining the citizens who are entitled to exercise the right of suffrage. Such laws are not intended to hinder or unnecessarily annoy honest citizens, or to prevent the free exercise of the elective franchise on their part. Those laws should facilitate rather than retard the legal voter, and should be reasonable in all respects.

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[15] Governor Hill's suggestion as to appeals in murder cases was embodied in L. 1887, chapter 493, amending section 517 of the Code of Criminal Procedure, and requiring that appeals from judgments of death be taken directly to the court of appeals. See Constitution of 1894, article 6, section 9.

Certain provisions of the Brooklyn registry law do not seem to comply with these suggestions, and are regarded as unnecessarily restrictive wherein they provide that registration shall absolutely cease on the Monday occurring two weeks before the annual general election. In the great city of New York citizens are permitted to register until the Saturday occurring the second week before such election, while in all the other cities of the State except Brooklyn, such registration is permitted until the Friday before such election. Why this unnecessary restriction should be insisted upon in the city of Brooklyn, and its citizens not afforded equal facilities for registration with those of the rest of the State or even with those in the city of New York, is not easily understood. There does not seem to be any good reason for the discrimination. At the recent election many citizens of that city were prevented from registration and, therefore, from voting, owing to their necessary absence from home or other engagements which prevented their registration at so long a period before the day of election. There is no sense or propriety in thus unnecessarily obstructing the path to the ballot box.

It is recommended that such laws be changed so that they shall conform in the respects mentioned to the registry laws in other parts of the State, or, at least, to those applicable to the city of New York.[16]

SEA-COAST DEFENSES.

There has recently appeared a letter from one of our ablest statesmen in relation to the necessity of providing more adequate protection to the sea-coast of the United States. Like all the other productions of his pen, it is attracting widespread attention throughout the country, and the State of New York, above all other States, is interested.

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[16] An act passed in 1890, chapter 355, required registration in Brooklyn to be completed on the Saturday of the second week preceding election day.

A commission appointed by authority of a previous Congress has been engaged for several months past in investigating the subject of coast fortifications and the necessity for the further protection of our harbors. It is expected that their report will be submitted to that body during the time of your session.

This is a matter essentially within the province of the general government. The interest, however, which the State of New York has in this question, and the discussion which it has called forth, suggest the advisability of some official expression on the part of this State in relation thereto. The propriety of the adoption of a joint resolution requesting that suitable action should be taken by Congress is submitted for your consideration.[17]

DAVID B. HILL.

SPECIAL MESSAGES.

January 12. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 12, 1886.

"In the annual message transmitted to the legislature, January fifth inst., I had the honor to say, in the closing paragraph of that portion relating to the sinking fund and public improvements in New York city:

'I contemplate, hereafter, presenting a special message to the legislature setting forth such plan and giving such reasons as may be pertinent for its adoption. The subject is of vital importance to the city of New York, and I trust it will receive, at the proper time, the consideration it merits.'

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[17] A concurrent resolution embodying the Governor's suggestion in relation to coast defences, and recommending congressional action on the subject, was adopted by the Assembly, but was not acted on in the Senate.

Following the course there indicated, I avail myself of the first opportunity to communicate with you upon the subject, and to inform you more in detail than was practicable in the annual message of the difficulties at present existing and the methods by which it is proposed to meet them.

By the amendment to the Constitution of this State adopted at the general election in 1884, and which went into effect on January 1, 1885, it was provided, among other things, that:

'No county containing a city of over one hundred thousand inhabitants, or any such city, shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided.

'No such county or such city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit.'[h]

The limitation thus placed upon the capacity of the larger cities of the State to incur indebtedness was wise in intention and calculated to produce beneficial results in the future, but it found certain of the cities, and notably the city of New York, wholly unprepared for so sudden a stoppage of the debt incurring capacity.

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[h] Const. 1846, art. 8, § 11, am. 1884.

On January 1, 1885, when the amendment above cited went into effect, the total debt of the city of New York, represented by bonds and consolidated stock, amounted to $126,871,138.58, while the total assessed value of its real estate subject to taxation, as it appeared by the last preceding assessment-roll, was $1,119,761,597, of which ten per cent. is $111,976,159.70, so that at the moment the constitutional amendment went into effect, the city of New York — assuming the construction lately given by the courts in reference to the legal *status* of the sinking fund to be correct — was already in debt to the extent of $14,894,978.80 in excess of the limit then put upon its debt incurring capacity.

It thus fell under the clause secondly above quoted from the amendment and was thereby prohibited from incurring further indebtedness until it should have reduced its then outstanding indebtedness to an amount less than the prescribed ten per cent.

The financial situation of the city on January 1, 1886, did not differ greatly from that which existed on the first of the preceding January.

It is true that during the year 1885, the city has paid off of its existing debt, $6,336,498.59, but it has in the same period issued bonds to provide for the supply of water to the amount of $4,950,000. These last mentioned bonds are exempted from the restriction imposed by the constitutional amendment, in so far as that they may be issued when necessary, notwithstanding the outstanding debt at the time of such issue may exceed the prescribed ten per centum, but when issued they become a part of the debt and are to be considered and included in estimating the outstanding debt. The value of the real estate in the city subject to taxation is also greater by $48,681,540, upon the assessment-roll made in 1885, than it appeared to be upon the assessment-roll made in 1884, but this increase in valuation increases the debt-incurring capacity of the city only to the extent of $116,844,313.70.

The summary of the financial condition of the city in respect to its power to issue bonds (for other purposes than to provide for a supply of water) was on January 1, 1886, as follows:

Assessed value of real estate subject to taxation as it appears by the last preceding assessment-roll.	$1,168,443,137 00
Of which ten per cent is	116,844,313 70
Outstanding indebtedness.	125,475,239 99

Or more by $8,630,925.29 than the limit permitted by the Constitution.

There will fall due of the present outstanding indebtedness of the city the following amounts during the next five years, viz.:

In 1886.	$3,654,949 54
In 1887.	11,372,671 00
In 1888.	3,921,939 14
In 1889.	5,961,100 00
In 1890.	5,569,400 00
Total.	$30,480,059 68

Which, if there were to be no further issue of bonds during that period would reduce the debt by the first of January, 1891, to $94,950,880.31.

But during that period there will necessarily be a large issue of city bonds to continue and complete the extensive work that has already been commenced for providing a further supply of water for the city, and, as has already been pointed out, the bonds so issued will, when issued, constitute a part of the debt of the city to be taken into account and included in estimating the whole amount of the indebtedness under the constitutional amendment.

Thus it becomes apparent that even if the assessed value of the real estate in the city subject to taxation shall continue to increase at the rate of $40,000,000 per annum, which has been about the average annual increase heretofore, the city will be wholly unable for some years to come, to borrow any money, except upon revenue bonds issued in anticipation of the collection of taxes of the then current year, and upon the bonds issued to provide for a further supply of water.

The fact has not been overlooked that of the outstanding bonded indebtedness of the city, the commissioners of the sinking fund held as an investment of their accumulated revenues $34,179,338.58 on January 1, 1885, and on January 1, 1886, $35,077,139.99. The local authorities of the city, as I am informed, have uniformly entertained the opinion that the bonds so held by the commissioners of the sinking fund were not to be deemed to have been paid by reason of the investment in them of the accumulated revenues of the fund, but must be included in and counted as a part of the outstanding indebtedness of the city, within the purview of the constitutional provision restricting the power of cities to incur indebtedness.

This opinion has recently received judicial sanction from the Court of Common Pleas of the city of New York, in a case in which the question was fairly presented and exhaustively argued. So long as that decision remains unreversed it must be accepted as a correct exposition of the law.[1]

In the meantime, however, it is claimed that there is a great and immediate necessity for the expenditure of a very considerable amount of money for the erection and construction of public buildings and other structures in the city of New York.

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[1] See Bank for Savings v. Grace, (1886) 102 N. Y. 313, reversing the Common Pleas.

There are a large number of children who should be receiving the benefits of free education, but who cannot be received into the public schools, because of the absolute lack of accommodation for them in the buildings at present available for school purposes in the city.

The city has purchased armory sites at an expenditure of $823,000, upon which it cannot erect armories while it is annually paying large rents for buildings and parts of buildings used for armory purposes by the regiments of the National Guard, which would be accommodated in the new armories if they could be built.

There is claimed to be a pressing demand for greater dock facilities, and new docks when constructed produce from the moment of their completion a large percentage upon their cost in the way of rents, yet as the law now stands the work of erecting new docks must stop, as bonds for the purpose can no longer be issued, and there is no provision by which money for this purpose can be raised by taxation.

Almost all the departments of the city government are now quartered in offices rented from private owners at large rentals, while the city has an abundance of land upon which a municipal building could be erected which would accommodate nearly all the departments under a single roof, and would save a large sum of money annually in the matter of rents alone.

The same constitutional amendment which prevents the issuance of bonds for the construction of the works so urgently needed, also operates to prevent the raising of the necessary money for the purpose by taxation.

It provides, in addition to the clauses already quoted, that:

'The amount hereafter to be raised by tax for county or city purposes, in a county containing a city of over one hundred thousand inhabitants, or any city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section, in respect to county or city debt.''[1]

The total assessed valuation of the real and personal estate of the city and county of New York, as it appears by the assessment-roll of said city and county on the last assessment for State and county taxes (that of 1885) was $1,371,117,003.00, which limits the amount which can lawfully be raised by taxation to $27,422,340.06, in addition to such sum as may be necessary to provide for the principal and interest of existing debt.

Of this amount about one-half is absolutely imposed upon the city by the constitutional provisions as to the number and salaries of the judges of certain courts, by mandatory acts of the legislature creating offices, fixing salaries or imposing other expenditures, and as the city's share of State taxes. Out of the remainder of less than $14,000,000 which might be raised by taxation if the utmost constitutional limit be attained to, provision must be made for the necessarily large expense of conducting the government and administering the affairs of the largest city in the United States.

There exists then on the one hand the seeming pressing necessity for the expenditure in the near future of large sums of money for the construction of works of permanent value, and on the other hand the impossibility of providing for such expenditure either by the issue of bonds, or by direct taxation.

The only apparent source from which such expenditure can be provided for is to be found in the revenues which annually flow into the sinking fund.

The sinking fund of the city of New York had its inception in an act passed on June 8, 1812, chapter 99 of the

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[1] Const. 1846, art. 8, § 11, am. 1884.

Laws of 1812, which after authorizing the issue of certain bonds or stock by the city of New York, provided, *inter alia,* that:

'All and singular the revenues of the Mayor, Aldermen and Commonalty (of the city of New York) shall be and they are hereby appropriated and pledged for the payment of the interest which shall become due on said stock.'

The stock authorized by this act was immediately issued, and on August 9, 1813, the Common Council adopted an ordinance reciting that it is highly desirable to establish a fund out of which purchases of the New York city stock may be made from time to time, whenever the same can be done at par or the true value thereof, whereby the said stock will be prevented from depreciating and the redemption of the same will be regularly progressing, and therefore it was ordained:

'That all moneys heretofore received and hereafter to be received from commutation of quit rents on grants issued prior to the year 1804, all quit rents arising from such grants as shall not be commuted, and all moneys heretofore received and hereafter to be received for licenses to pawnbrokers and dealers in the purchase or sale of second-hand furniture, metals or clothes for hackney coach licenses, and for street vaults, all market fees and market rents, twenty-five per cent on all sales of real estate belonging to the corporation and hereafter to be sold, and all such other sources of revenues or sums of money as said corporation shall hereafter think proper to appropriate for that purpose, shall be and hereby are firmly pledged, appropriated and applied to, and shall constitute and form the fund for the purpose aforesaid, until the final redemption of the whole of said stock.'

On March 24, 1830, (chap. 101), the legislature authorized a further issue of city stock. By this act all the provisions of the act of 1812 relating to the sinking fund were made applicable to the present act, and it was also provided that 'nothing herein contained shall be so construed as to deprive the holders of stock created by said act (of 1812) of any lien which they are entitled to by said act upon the revenues of the Mayor, Aldermen and Commonalty.'

The stock issued under the foregoing acts fell due in 1826, when the legislature authorized a further issue to take up the stocks falling due, making all the provisions of the act of 1812, relating to the sinking fund, applicable to the newly authorized issue.

Other loans were authorized by the legislature in 1828 and 1834, and in each instance the sinking fund provisions of the act of 1812 were made applicable to the newly authorized issue of stock. From time to time ordinances were passed by the Common Council confirming and continuing the provisions of the ordinance of 1813 and providing some additional sources of revenue for the sinking fund.

In 1844 the Common Council passed an ordinance creating two sinking funds — one being denominated 'the sinking fund of the city of New York for the redemption of the city debt,' and the other 'the sinking fund of the city of New York for the payment of the interest accruing and to accrue upon the stocks of the city of New York.'

To the first named sinking fund were pledged and appropriated all moneys theretofore received, or thereafter to be received from eleven specified sources of revenue, and to the secondly named sinking fund were in like manner pledged and appropriated all moneys thereafter to be received from nine different specified sources of revenue.

By an act of the legislature, passed May 13, 1845, chapter 225, it was provided that the ordinance above referred to should 'not be amended without the consent of the legislature first had and obtained, save by setting apart and appropriating to and for the purpose of the said sinking fund additional revenues.'

The revised ordinances of 1880 continue to the sinking fund the sources of revenue specified in the ordinance of 1844, except excise license money, which, by authority of chapter 221, Laws of 1875, are appropriated to charitable purposes.

By chapter 383, Laws of 1878 (re-enacted in chapter 410, Laws of 1882), the foregoing sinking funds are continued and the foregoing pledges and appropriation of revenue to them are renewed.

It seems to be clear, beyond reasonable question, that so long as there remains outstanding and unpaid any part of the bonds for the ultimate payment of which the above mentioned revenues have been pledged, it is beyond the power of the city of New York or the legislature to divert from the sinking fund any portion of such revenues, and such diversion seems to have been specially guarded against and rendered impossible by sections 4 and 5 of the act of 1878. Nor would such a diversion of these repeatedly pledged revenues become any more lawful if it should appear that said revenues have increased to an annual sum which, if accumulated to the date of maturity of the last bond chargeable upon it, would not only be sufficient to pay that last bond and all like bonds which had theretofore fallen due, but would leave an accumulated surplus after such payment of some millions of dollars. It cannot be conceived that any court would ever hold that a debtor could violate his solemn contract to give to his creditor certain security, simply because the debtor surmised or believed, or even could demonstrate that such security would prove to be more than adequate. In such an event the creditor would be justified, by all known principles of law, in insisting upon the letter of his bond.

In point of fact the revenues pledged as hereinbefore shown to the sinking fund, have grown to proportions which promise an accumulation and increase of the fund far in excess of any possible demand upon it.

The revenues pledged to the sinking funds established by the ordinance of 1844, amounted in that year, inclusive of interest on investments, to the sum of $1,040,188.37, while the revenues of the same funds in 1884, amounted likewise, inclusive of interest on investments and deposits, to $7,798,714.29.

A careful estimate shows that if the annual revenues of the sinking fund shall not grow less than they now are, and if no future bonds should be made payable out of the fund, there would be in that fund, after paying all the present outstanding debt down to and including the last bond, which will fall due in 1933, an accumulated surplus of a very large amount.

As has already been shown there are vital legal objections to diverting from the sinking fund any of its pledged revenues, but there does not seem to be any such objection to providing a different method of investing some part of these revenues from that which has heretofore obtained, taking care only that such newly provided form of investment be one which offers ample security, in case of need, not only for the money invested, but for an income from such investment at least equal to that which would be derived from the investment of the same amount of money in city bonds.

Such an investment would, it seems, be provided if the commissioners of the sinking fund were empowered to annually invest a portion of the revenues pledged to and received by them, say to an amount not exceeding the sum by which said revenues in any one year exceed $3,000,000, in the erection and construction of docks and buildings for public uses in the city of New York upon property belonging to or to be acquired by the municipality, upon which buildings and structures, as well as upon the property upon which they may be erected, the commissioners of the sinking fund shall retain a first preferred lien, so secured as to be impossible of diversion until the final extinguishment of all debt for which the sinking fund is pledged, at which time the property should vest in the city of New York, freed from all liens and charges.

In the meantime, and until the final extinguishment of the debt shall free the sinking fund of all charges and pledges now imposed upon it, the city of New York should be required to raise annually by taxation, and to pay to the commissioners of the sinking fund, an amount equal to three per centum upon the whole amount of money invested, and should, in addition, be required to take proper and needful measures to keep the buildings and structures in repair.

If a statute should be passed, such as here suggested, it is believed that the city of New York will be enabled, at an early day, to provide for some of its more pressing necessities, so far as the erection of public buildings is concerned, and, in doing so, it will not violate either in letter or spirit the constitutional limitations upon its debt incurring capacity. The evil sought to be guarded against by that provision of the constitution was the imposition upon future generations of taxpayers of the payment for the expenditures of to-day. By the method now suggested no payment, present or future, will be imposed upon the taxpayers other than those which are immutably fixed and which must continue to be made whether the scheme now suggested be adopted or not. As has already been pointed out, it is entirely probable that the money invested as herein suggested will never be actually required for the purpose to which it is by law appropriated, but even if, in consequence of some financial or other disaster, which cannot now be foreseen, the commissioners of the sinking fund should, at some future day, find it necessary to foreclose their liens upon the property in which they have invested a portion of their revenues, the city of New York will not then find itself any worse off than it is at present and it will have enjoyed in the meantime the advantage of having had the use of much needed buildings at an exceedingly moderate cost per annum.

In order to put some limit upon the period during which the city of New York will be required to pay annual rent or interest upon the money invested by the sinking fund commissioners, provision should be made that no bonds to be hereafter issued shall be made payable out of so much of the revenues of the sinking fund as shall be invested in the manner herein suggested.

I am assured that the proper authorities of the city of New York will speedily prepare, and cause to be introduced in the legislature, a bill which will embody the foregoing suggestions, and which will contain all the necessary and proper safe-guards and protection, as well for the municipality as for the holders of the city bonds. I commend such proposed legislation to your prompt and careful attention.

DAVID B. HILL."

January 14. To the Assembly: Transmitting the annual reports of the Adjutant General, the Board of Commissioners of Pilots, and the Commissioners of the New Capitol.

January 27. To the Assembly: Transmitting the annual report of the Civil Service Commission.

January 27. To the Assembly: Transmitting the annual report of pardons, reprieves and commutations for the year 1885.

February 1. To the Assembly: Transmitting the annual report of the Cooper Union.

February 15. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *February* 15, 1886.

"Horatio Seymour is dead. The sad event which is announced to you with deep regret occurred at Utica, on Friday evening last.

It is deemed appropriate that such suitable action should be taken by the legislature, in behalf of the people of the State, as will fitly express their great sorrow at the death of their most distinguished citizen. For over half a century he has been prominent in the affairs of our State, having been three times a member of the legislature, once Speaker of the Assembly, Mayor of the city of Utica, presidential elector, and twice its Governor. In addition to these honors conferred upon him by the people, he has acceptably served upon several important commissions appointed by the Executive, and, in 1868, he was the candidate of a great party for the Presidency of the United States, and received therefor the electoral vote of this his native State.

During his long career he has always discharged the duties of the high trusts committed to him with conspicuous fidelity, most signal ability, and conscientious devotion to the public good. As Chief Executive of the State during a critical period in its history, he was earnest in his defense of the Union and loyal to the cause of the Constitution, and, at the same time, was bold and fearless in the protection of every just right of the humble citizen, and zealous in the maintenance of the sacred honor and credit of the State.

The Christian patriot, the friend of honest government, the defender of civil liberty, the conscientious citizen—has passed away.

It is fitting that the close of such a life should receive more than ordinary recognition, and I commend to your consideration such proper expression of the public sorrow and such legislative action concerning his funeral as in your judgment may be deemed appropriate.[18]

DAVID B. HILL."

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[18] Horatio Seymour died February 12, 1886. The Senate adopted a resolution to attend the funeral, and in the Assembly a committee of fifteen was appointed for the same purpose. A concurrent resolution was adopted providing for memorial services to be held on the 7th of April, at which the

March 9. To the Assembly: Transmitting the annual report of the commissioners of quarantine, together with the report of the Health Officer, and an inventory of the property of the State now in the custody of such commissioners.

March 18. To the Assembly: Transmitting the annual report of the State Commissioners of Health, together with an appendix and maps.

March 19. To the Assembly:

Veto of a bill entitled "An act to incorporate the Retail Grocers' Union of the city of New York."

"This is special legislation, and should not be enacted. The objects of the proposed incorporation can be obtained under the existing general laws of the State.

There are already general laws which provide for the incorporation of associations for 'social,' 'charitable,' 'mutual benefit,' 'benevolent,' 'economic' and other similar purposes, as well as for almost every kind of lawful business. It is clear that the association proposed to be incorporated by this bill can be organized under some of these various general acts, without the intervention of the legislature. If, for any reason, it is claimed that such laws are inadequate or insufficient, or not well adapted to accomplish all the particular purposes desired, then such general laws should themselves be amended, rather than resort should be had to the granting of a special charter. This act would furnish a bad precedent for the future, and make it difficult to refuse similar applications. The constitution by its restrictive provisions contemplates that all such corporations should be organized under general laws.*

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two houses were to meet in joint session. The resolution provided that the Governor be invited to preside at the services, and that the ex-governors of the State, and State officers be invited to attend; also that Hon. Erastus Brooks be invited to deliver a memorial address.

Afterwards the date was postponed to April 14, and the memorial services were held in the evening of that day.

* Const. 1846, art. 8, § 1.

Governor Dix, in his annual message of 1874, well said as follows:

'The restriction contained in the Constitution has not been in all cases respected; for it is well known that charters are frequently sought and obtained by individuals desirous of being associated for private purposes, not because there is any difficulty in effecting their object under existing laws, but because a special act of the legislature is regarded as attaching to such associations a higher public estimation, even when conferring no additional privileges or powers. The legislature, in yielding to such applications under a natural desire on the part of the members to gratify the wishes of their constituents, has disregarded a restriction which was intended by the constitution as a restraint upon unnecessary legislation.'*

Unquestionably the existing voluntary association known as 'The Retail Grocers' Union of the city of New York,' is a very worthy, reputable and meritorious organization, and there is no objection to its being properly incorporated, and I am willing that it should be aided by all necessary general laws for such purpose. But the legislation proposed by this bill is special in its character, and cannot be approved.'

The bill was not passed over the veto.

March 19. To the Assembly:

Veto of a bill entitled "An act to incorporate 'The Brooklyn Retail Grocers' Association.'"

"The reasons for such disapproval have been fully stated in a communication this day presented to the Assembly, in regard to a similar bill entitled 'An act to incorporate the Retail Grocers' Union of the city of New York.'"

The bill was not passed over the veto.

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* *Ante*, vol. 6, p. 640.

March 19. To the Assembly:

Veto of a bill entitled "An act to amend chapter thirty-eight of the laws of eighteen hundred and seventy-two, entitled 'An act providing for appeals from the decisions of county superintendents of the poor.'"

"The law already provides for appeals to the county court from decisions of county superintendents of the poor. This bill provides for an additional appeal from the county courts to the general term of the supreme court. It is believed that there is no necessity for such increased opportunity for litigation.

The matters decided by superintendents of the poor relate principally to the settlement of paupers upon the various towns of the county, and usually involve only questions of fact, without any very serious questions of law.

The theory of the existing law which limits appeals to the county courts and in effect makes their decision conclusive, is that such comparatively unimportant matters of litigation should not be foisted upon the general terms of the supreme court, which are already overcrowded with business, and that the county courts furnish a speedy, safe and sufficiently competent tribunal to properly and satisfactorily dispose of all such questions. No good reason has been advanced why the law as it now stands is not well enough. It is better for all concerned that such questions should be summarily and speedily determined, and that the decisions of the county courts should be final and conclusive.

The tendency of the times is towards excessive litigation, and it is not wise to encourage it.

The legislation proposed by this bill seems ill-advised and undesirable."

The bill was not passed over the veto.

March 22. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 22, 1886.

"I have this day approved an Assembly bill, entitled 'An Act to secure adequate compensation for the right to construct, maintain, use, operate or extend street railroads in cities and villages.'

With this announcement, a few suggestions pertaining to this important measure and other necessary legislation that should properly follow it, are rendered eminently appropriate.

The legislature in 1884 passed what is known as the general street surface railway act. Among other things it provided that the local authorities of any city might 'at their option' sell at public auction the franchises of their streets for the operation of surface railways. The fact was recognized that such franchises, especially in the large cities, were valuable, and where there were rival applicants therefor, it was believed that the local authorities, having the interests of their municipalities at heart, would unquestionably avail themselves of this fair and honest method of disposing of such franchises.

Governor Cleveland, in his memorandum approving that measure, said upon this point:*

'It is strongly urged that the bill should oblige the local authorities, in all cases, to put these franchises up at auction, and sell the same to the highest bidder. Such a provision might have resulted in no harm, though throughout the State in a large majority of cases, the price bid would have been nominal. The proposition that the sale at auction should be obligatory, gains much of its supposed force from the contemplation of the condition of affairs in the city of New York. But this legislation is for the entire State, and with the advertisement of application for franchises provided for in the bill, and the competition which would follow, if the same were of value, and with a close regard on the part of the local authorities to the interests of the people which they represent, the localities, I think, will be sufficiently protected. If the local authorities are determined to cheat and defraud their constituents by refusing to put up a valuable franchise at auction, they must, under this bill, do it in the broad light of day, and with a brazenness and boldness that would find a way to evade the most carefully framed law.'

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* *Ante*, vol. 7, p. 1069.

It has been demonstrated that this discretionary power was unwisely conferred, and that the disposition of franchises at an open public sale should have been made obligatory. Valuable franchises in the city of New York have been practically given away 'in the broad light of day, and with a brazenness and boldness' unparalleled in the history of our municipalities. Recent developments have made clear the frauds and crimes by which such results were accomplished.

Instead of exacting compensation for the city, its recreant officials have made themselves the beneficiaries of their official action, and their votes, rather than the franchises, have been sold to the highest bidder.

The particular facts are too familiar to require detailed repetition. It is enough to recall that the aldermen of that city refused to permit the city to avail itself of the power to dispose of the franchise of Broadway for what it would realize at an honest public sale, and, without exacting a dollar's compensation, the aldermen gave the franchise away to a corporation that had purchased the majority of the votes by which the outrage was consummated. This scheme for debauching the officials of the city and plundering the public, was successfully carried out. The mayor's veto of the iniquitous grant was speedily overruled at a special meeting hastily and irregularly called, and the conspiracy was executed by the aid of bogus injunctions, the sudden seizure of Broadway in the night-time, and the completion of the railroad before the honest people of the city had recovered from their amazement at the boldness and audacity of the conspirators. All this was done against the protest of the citizens, and in spite of the fact that millions had been offered the city by responsible parties for the same franchise.

More recently the aldermen again refused to sell the railroad franchises of its streets at a fair and open competition, and granted to a single corporation such franchises in over seventy-five miles of streets. This action was vetoed by the mayor, and the question of overruling such veto was pending at the time of the passage of the act which I have this day approved, and is still pending.

The events to which reference has been made rendered necessary the prompt enactment of this bill. It makes compulsory upon the local authorities what was before discretionary, and provides that they must, as a condition of their consent, sell the franchises proposed to be granted, at public auction to the highest responsible bidder. It further provides that this provision as to public sales shall apply to all applications now pending to which consent has not been already finally given by the requisite local authorities, and by the latter part of section two of the act it is made also to apply to those cases wherein such consent of the local authorities has been obtained, but the consent of the requisite number of property owners is still lacking.

There can be no reasonable objection to the general features of this measure. It is founded upon justice and common fairness and is alike beneficial to the municipalities affected, as well as fair to rival railroad companies.

The bill has been hastily formulated, and it is doubtless imperfect in some of its details. It does not seem to go far enough in all respects. It should provide safe-guards for the purpose of enabling the municipal authorities to correctly ascertain the amount of the "gross receipts" upon which a percentage of compensation is to be based, and it should specifically regulate all the proceedings pertaining to the sales, and otherwise more fully protect the rights of the people. These amendments can be hereafter made.

It is also possible that injustice may be done to some railroads in different portions of the State by the operation of the latter part of section two of the bill. The legislature may not have intended to disturb the *status* of those companies that had honestly, fairly and in good faith obtained the consent of the municipalities for an adequate consideration paid or agreed to be paid, and where no claim has been made that a greater compensation was offered or could have been obtained. If this is so, the error can be corrected by supplemental legislation.

Although it has been my usual course to require that all bills shall be fully and carefully perfected before their approval, so as to avoid the necessity of early amendment, yet, by reason of the advisability, if not absolute necessity of this bill becoming a law to-day, I deemed it my duty not to peril the measure by insisting upon its recall.

The approval of this bill to-day will effectually prevent the consummation of the recently contemplated wholesale grants, and will protect the public from similar raids in the future.

But the question is seriously presented for your consideration whether there is no redress for the past.

Is it possible that the franchise of the greatest thoroughfare in America can be obtained by fraud, corruption and bribery, and the people be obliged to sit idly by and contemplate the spectacle of the bribers or their convenient assignees in peaceable possession of their stolen franchise, enjoying the fruits of their wrong-doing?

The guilty parties may be punished criminally, but it seems equally important that the defrauded city should have an adequate remedy. It is believed that such action should be taken by the legislature as will effectually prevent such schemes from resulting in any profit, and that will restore to the city the franchise that was stolen from it. The interests of public morality require that the holders of the booty, whether at first or second hand, should not be allowed to carry it off triumphantly.

An effectual remedy is in the hands of the legislature. The corporation by or in whose behalf the board of aldermen was corrupted holds its charter at your discretion. '*The Legislature may at any time annul or dissolve any corporation,*' formed under the General Railroad Act of 1850 or the Street Surface Railway Act of 1884, is the language of the statute. It is plain, clear and decisive. It means exactly what it says. In addition to this the general law of the State applicable to all corporations (Title III, Chapter XVIII, first part of the Revised Statutes), provides that the charter of every corporation '*shall be subject to alteration, suspension and repeal in the discretion of the legislature.*'

The repeal of the charter and the dissolution of the corporation would vacate the stolen franchise. It would restore to the city of New York its own property of which it has been despoiled, and would afford a salutary lesson and establish a precedent valuable in all the future history of our State. Without additional legislation the courts seem powerless to render any effectual aid. There is need of heroic treatment, fearlessly and speedily applied. The people are looking to the legislature in this emergency, and it is necessary that the purpose to defeat this conspiracy of fraud, corruption and public robbery, should be conspicuously manifested. The more effectual and the more swift the measures of redress are, the more will such action redound to the honor of the State.

When an individual highwayman seizes his neighbor by the throat and robs him of his life and property, the law compels not only restitution of the property, but takes the life of the robber as well. For corporate highwaymen the same remedy exists and may be applied. The grasp of this corrupt combination of bribers upon the franchise which by collusion it has secured from the city of New York is such that only by the destruction of the corporation itself can release be obtained. Capital punishment is approved by divine and human laws, and the time seems to have come when the like principle of retribution must prevail and like justice be meted out to banded despoilers of the life, honor and property of our commonwealth.[19]

DAVID B. HILL."

March 24. To the Assembly: Transmitting the annual financial report of the Sailors' Snug Harbor.

April 9. To the Assembly:

Veto of a bill entitled "An act to change the name of the 'First Congregational Society in the town of Byron.'"

"This act is not necessary. The legislature by chapter 280 of the Laws of 1876, has provided a method whereby the name of this society can be changed upon proper application made to the courts. The intervention of the legislature need not, therefore, be invoked.

No special acts should be passed where the objects thereof can be obtained under general laws or upon application to the courts."

The bill was not passed over the veto.

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[19] The act, chapter 65, which was the subject of this message, was amended at the same session by chapter 642, approved June 15.

Chapter 268, passed May 4, annulled and dissolved the Broadway Surface Railroad Company, incorporated by articles of association filed in the office of the Secretary of State May 13, 1884, and repealed its charter. As to the effect of the repealing act, see People v. O'Brien (1888), 111 N. Y. 1.

April 9. To the Assembly:

Veto of a bill entitled "An act to authorize the superintendent of public works to construct a lift, hoist, swing or draw-bridge over the Erie canal upon Genesee street, in the city of Utica."

"This bill appropriates the sum of $10,000 for the purpose of constructing a new bridge over the Erie canal, upon Genesee street, in the city of Utica, upon a level with Genesee street, in the place of the present high bridge.

The present bridge is in good condition and a new one is not required for any purposes of navigation or to subserve any interests of the State. The construction of such proposed bridge is not left discretionary with the canal authorities, but is made imperative.

Although the bill was opposed by several citizens of Utica, who were represented at the hearing before me, yet it is probably true that a large majority of the citizens of that city favor the construction of this bridge at the expense of the State. It would unquestionably be a valuable local improvement, of considerable benefit to the property upon Genesee street adjacent to the bridge. If the present bridge was out of repair, or was not adequate for the purposes of the State, or any other good and sufficient reason existed which compelled the erection of another bridge at the present time, there would be no objection to the construction by the State of a modern lift-bridge on the level of the street.

The State, in building new bridges, should adopt modern improvements, and, as far as possible, accommodate the citizens of the cities and villages through which the canals pass. But the question is presented whether the State should take down good bridges and erect new ones simply and solely for the purpose of effecting a local improvement or benefit to the particular city or village interested. The State has not heretofore adopted any such general course. There are scores of bridges in the several cities and villages of this State, situate just as this one is, and if a precedent shall now be established, it will be difficult to resist the importunities and demands of those localities. I cannot be expected to approve this bill and not approve others of like character.

The State has consented to changes of bridges by substituting lift bridges on the level of streets for high ones, but the expense has usually been borne, in whole or in part, by the cities interested in the improvement. This is the course pursued in the city of Rochester and other places, and no exception can properly be made in favor of Utica.

It already costs the people of the State over a million of dollars annually to maintain the present system of free canals, and localities situate remote from the canals keenly feel the burden of taxation imposed. It is unwise at the present time to unnecessarily add to those burdens. Until the State shall adopt some general and uniform system to be pursued in reference to the substitution of modern lift bridges for the present high bridges in the cities and villages of the State, it is not advisable at this time to establish a precedent which may prove a detriment to the State.

The bill is also faulty in some of its details. The amount should be appropriated from the canal fund instead of the general fund. The comptroller has requested that this distinction be observed by the legislature in making canal appropriations, but the suggestion has not been followed in this bill.

The bill does not sufficiently provide for the payment of the expense of the operation of the proposed bridge by the city of Utica. The simple declaration that it shall be operated at the expense of that city, is hardly adequate. The manner and methods of enforcing such claim should be specifically provided for.

It is understood that there are other bills before the legislature in regard to new bridges which are awaiting the disposition of this bill.

I requested the author of this bill to recall it for further consideration, but he did not deem it advisable so to do. I cannot approve it at the present time or in its present shape."

The bill was not passed over the veto.

April 13. To the Assembly:

Veto of a bill entitled "An act to amend section one of title three, chapter eight, article first of part first of the Revised Statutes."

"This bill seems to be for the benefit of the public printers, rather than in the interest of the general public who pay the taxes. It amends that part of the Revised Statutes which relates to the annual report of the comptroller, and which in its present form has existed for many years, and has well fulfilled the purpose for which it was framed. By existing law the comptroller is required to exhibit annually to the legislature a complete statement of the public expenditures during the preceding fiscal year. The bill before me proposes that this complete statement shall, in addition, include 'a detailed and an itemized statement of all sums for which warrants have been drawn,' during the fiscal year upon funds in the treasury duly appropriated.

The ostensible object of the bill is to secure publicity, by publication in a State document, of every item of expense in every department of the State government. If this is the real object, the bill fails in the following important particular: It does not provide for the publication of a statement of all sums contained in vouchers that shall have been submitted to the comptroller, but only for the publication of a statement of the sums for which *warrants shall have been drawn.* The accounts of all insane asylums, deaf and dumb and blind institutions, houses of refuge, reformatories and the like, whose maintenance is in part from earnings and receipts other than from the State treasury, are thus omitted from the scope of this bill. These expenditures are not included in warrants drawn by the comptroller, and, therefore, though the vouchers of these institutions are submitted to him they are not reached by this bill. The State treasury, it must be borne in mind, contributes but a portion of the income of the institutions named, and, while their vouchers for all expenditures are submitted to the comptroller according to law, such vouchers do not accompany the warrant of the comptroller drawn upon the treasurer. These warrants are drawn upon the requisition-receipt of the financial officer of the institution in whose favor the appropriation is made by the legislature and are accompanied by such receipt.

On the other hand, the bill does reach a class of departments where the expenditures are largely for salaries of officials or wages of employes. These items are tens of thousands in number, and both in name and amount are well-known, and in most cases are regularly published in documents annually issued. Certainly no great public interest can be served by the publication of several volumes of names and figures, reproduced from semi-monthly, monthly or quarterly pay-rolls. To do this as required by the bill would necessitate the printing of the amount paid, and the name of every man employed in the prisons, on the canals and on the capitol, not once only, but as often as each employe was paid. These items alone, it is estimated, would make between four and five thousand pages of matter most expensive to put in type, and necessitating most careful preparation and proof-reading.

If, however, any individual is curious in these matters, a detailed and itemized copy can be obtained from the comptroller upon the payment of a small fee, and this is already provided for by existing law. Should the legislature, or any of its regular or special committees seek like information, the comptroller's office is not far distant from the capitol, and the comptroller, moreover, is at all times ready to afford every facility for the examination of the records of his office, and is willing to make such copies of any of them as shall be desired by the legislature.

A few of the imperfections of the bill, as well as the needlessness of the scheme, have thus been shown. The question of the additional expense involved is now to be considered.

1. A compliance with the provisions of this bill would require the comptroller to make a copy of each bill and pay-roll hereafter presented from each of the departments included in this plan — and including also all the bills and pay-rolls presented during the last six months, the present fiscal year having begun October 1, 1885. This, with the proof-reading of the thousands of printed pages, made up of names, articles, prices and extensions in figures, would require a very considerable increase in the clerical force of the comptroller's office.

To meet the expense of this additional clerical force, no appropriation is made in the bill.

2. But much the larger item of expense would be that of printing. A careful estimate has been furnished me by the comptroller's office, and from it, it is apparent that $25,000 would not more than meet the cost of the publication of such a detailed and itemized statement as is contemplated. All the public documents of the State, comprising from thirteen to fourteen thousand pages, are now printed at a cost of about thirty thousand dollars. What this bill proposes to print would make a publication of from eight to ten thousand pages of most expensive matter (much of which would also appear in other State documents), and the cost certainly would not fall below the figure of twenty-five thousand dollars heretofore named. There would be at least ten large volumes, containing each from eight to ten hundred pages of names, articles and prices, with extensions. For instance, the capitol pay-rolls

alone, if they should continue for the future as in the past, would occupy two thousand pages. I am of the opinion that the money of the people of the State can be used to much better advantage than in the publication of documents which would rival patent office reports in bulk, and be far less interesting to the generality of the citizens of the State.

For this large expense of printing no appropriation is made in the bill.

The bill thus appears defective, extravagant and impracticable. It does not have the approval of the official to whose department it chiefly relates, and it would almost, if not quite, double the expenses of his office. After painstaking examination I am forced to the conclusion that the enactment of this bill would not result in any reform, but would bring about a great, uncalled for and unjustifiable increase in the expenses of the administration of State affairs.

A statute which has existed in its present form for over fifty years, and with the operation of which no fault has been heretofore found, may well be permitted to remain as it is. Certainly, at least it may so remain until some improvement is suggested not open to the serious objections that have here been pointed out."

The bill was not passed over the veto.

April 14. To the Senate:

Veto of a bill entitled "An act to fix and determine the annual salary and compensation of captains of the police force in all cities of this State having, according to the last census, a population exceeding nine hundred thousand."

"This act increases the salaries of police captains in the city of New York, from two thousand to two thousand seven hundred and fifty dollars. I am inclined to think that the police captains of that city should receive a larger salary than two thousand dollars. The position is one of exceptional responsibility and power, and they should be well paid for their services. I do not conceive it, however, to be my duty to pass upon that question. This act is objectionable because it is a mandatory law requiring that a certain fixed salary shall be paid, without reference to the judgment or desires of the local authorities of New York. The local authorities of that city are in the best position to judge of the merits and needs of all employees. The salaries of policemen, firemen, and positions of like character should be fixed and determined by some local authorities of that city within certain limits fixed by law. This principle has been violated in the past, but it is a proper time now to enforce it.

I believe in home rule for cities, and that New York city should be governed at home, rather than at Albany, especially in reference to mere questions of discretion. The amount that should be paid the police or firemen and like employees in New York city should be fixed and determined by the proper departments in that city, rather than at the capitol.

There would be no objection to this bill if it permitted the police commissioners, with the approval of the board of estimate and apportionment, to fix the salaries of police captains, with the restriction that such salaries should not be less than those now paid nor more than a figure to be named in the act. Such a measure I would cheerfully approve. It being my opinion that it is the proper time to insist upon the principle of permitting all such questions as the increasing of salaries and like matters of discretion, to be determined by the local authorities of the municipality affected, rather than in the method provided by this bill, I cannot approve this measure.

I place my refusal to approve this bill distinctly upon this ground, not determining any other question involved."

The bill was not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act making an appropriation for continuing work on the capitol building; constituting a board of commissioners of construction of the capitol; regulating their powers and duties, and abolishing the office of the commissioner of the new capitol and the board of advisory commissioners of the capitol."

"The bill legislates out of office Isaac G. Perry, the present capitol commissioner, who has had charge of the construction of the capitol during the past three years. He is removed without any charges having been presented against him, in the absence of any investigation or hearing, and in face of the conceded fact that he is an honest man and a faithful and most competent architect and builder. The place was unsolicited on his part when he was originally appointed, and it was accepted at considerable inconvenience and personal sacrifice, and in the belief that he would be permitted to finish the capitol. After having served the State conscientiously and satisfactorily, and when his own private business has been disarranged, he, an experienced builder, is set aside in an offensive manner to make room for a so-called non-partisan commission, composed of four partisan officials possessing no experience or qualifications for the work to be performed.

In the place of a skilled and practical architect and builder, a new commission is substituted, consisting of four officials, to wit, the Governor, lieutenant-governor, the speaker of the assembly, and the temporary president of the senate — three lawyers and one manufacturer — wholly unacquainted with the art of building and ill-adapted for the management of public works, and this commission is given sole charge of the construction of the capitol, including the employment of workmen, and the purchase of the necessary supplies and materials. It would seem as though the necessities of the State are not so pressing as to require these State officials to assume such onerous and inappropriate duties. Neither the Governor of the State nor the lieutenant-governor, nor the honorable and dignified presiding officers of its legislature should be compelled to engage in the task of employing workmen or purchasing supplies for the capitol or for any other public work. Yet this bill contemplates the performance of just such services. I am sure that neither the Governor nor lieutenant-governor desire or seek any such opportunity, responsibility or patronage.

All of the proposed commissioners, except the Governor, reside away from Albany, and the principal burden of management or over-sight would necessarily fall upon him the greater share of the time, and he may very properly protest against his department being turned into an employment bureau. Neither he nor the other proposed commissioners possess the necessary qualifications for the conduct or management of a great mechanical work, and it seems ridiculous and absurd to impose such a responsibility upon them.

There exists no necessity for any such unreasonable measure as this, and it is hard to believe that it reflects the deliberate judgment of the legislature. It is conceded that it is the product of a party caucus, and that it was passed as a political measure at the arbitrary dictation of such caucus and against the better judgment of several of the most intelligent members of the majority, who reluctantly voted for it, but made arguments against it. That it is a political measure, designed to secure partisan advantage and patronage cannot be disguised. Its political nature cannot be concealed, and there was but little attempt to do so during its progress through the legislature. In fact, it was boldly asserted by the advocates of the bill before an assembly committee, that its object was to secure a share of the 'patronage' incident to the construction of the capitol, and that there must be 'a division of patronage, or no appropriation.' The doctrine of legislation for the sake of 'spoils' was never more unblushingly advocated.

It was urged by the promoters of the bill that all the bosses, clerks, watchmen, foremen, mechanics and laborers should be divided equally between the two principal political parties, and a commission consisting of partisans — two from each party — should be selected to personally see to it that such equal division was secured and maintained. In other words, a non-partisan commission (so-called) is created for the very purpose of fostering partisanship. Instead of forbidding any distinction to be made on account of a laborer's political opinion, such distinction is to be observed and exact equality of partisan representation is to be maintained among the employees.

This would require the commissioners of construction to call the roll every morning to ascertain whether there were not a few more Democrats than Republicans among the laborers, and to adjust the difference if any exist. This is the theory of the bill, and it is gravely threatened that if such a programme is not assented to by the Executive, there shall be no appropriation whatever, and the work upon the capitol shall cease.

A most dangerous doctrine, and one liable to lead to serious complications between the different departments of the State government is thus asserted. The Executive of the State might with equal propriety (if like considerations of partisanship were to govern his official actions) refuse his approval of appropriations for the department of public instruction, the superintendent of state prisons, or any other department under the control of his political opponents, unless the employees of such department should be equally divided between the two political parties, and thereby recklessly stop the public business and block the wheels of government. No such attitude has ever before been assumed by either legislature or Executive. It was but a few weeks ago when the Executive approved a bill which placed in the hands of the Republican superintendent of state prisons the enormous sum of eight hundred thousand dollars to be disbursed by him in the management of his department. The Executive did not insist, as a condition of such approval, that the agents, guards, clerks, watchmen and other employees and laborers in and around the prisons of the State should be divided between the two parties. There was no attempt to solicit or coerce any patronage whatever. Appropriations were approved by him last year for the quarantine commissioners, the State board of charities, the board of regents, and several other departments under the control of the Republicans, and in which scarcely a single Democrat was employed, and no division of patronage was suggested or expected.

The present legislature has in its employ a large force of employees, consisting of clerks of all kinds, doorkeepers and assistant doorkeepers, sergeant-at-arms and assistants, postmasters and their clerks, messengers and clerks of committees, librarians and assistant librarians, superintendents of documents and janitors, all of whom are Republicans and for the payment of whose wages an appropriation is expected to be approved by the Executive without question or hesitation. In addition to this array of faithful partisans, there has been inserted a new source of political patronage by the creation by the legislature of a corps of bogus 'stenographers' employed at large expense but in conceded violation of law. The minority has not asked for any share of legislative patronage, but admits that it may be controlled by the party in power in the legislature. Neither the Executive nor the Democratic members have endeavored to 'strike' in regard to any appropriation for the support of any of the departments of the government, in order to obtain any share of its patronage, but have cheerfully voted and approved whatever amount was deemed necessary for their proper maintenance. Yet because of the paltry excuse that it is claimed that there have been employed upon the capitol a larger number of Democratic than Republican workmen, the present system of management must be entirely overhauled and changed, Mr. Perry must be dismissed, a partisan board must be created, and an appropriation for the continuance of the work must be made to depend upon compliance with such conditions. It does not seem possible that such a position can meet the approbation of the 'sober second thought' of the legislature.

There ought not to be any difficulty in regard to the performance of public duty in these matters. The legislature should appropriate whatever sums may be needed for any of the departments of the State, or for any necessary public work in progress of completion, irrespective of the political complexion of such departments or the politics of those intrusted by law with the charge of such work. The fact should be recognized that such authorities who are responsible for the conduct of their departments or for the work in hand, may employ as workmen whomsoever they please, irrespective of their politics, and may select them all from one party or all from the other as they may see fit. So long as the public work shall be faithfully and honestly performed, the political opinions of the workmen should be an immaterial matter.

This is the only safe rule to follow, and any departure from it leads to difficulty and embarrassment, and invites retaliation, especially where the Executive and the legislature are of opposite politics. The Republican superintendent of State prisons, although appointed by a Republican governor many years ago, should receive whatever appropriations may be necessary to enable him to properly conduct his department, no matter what employees he may select, whether all from one party or all from the other, or divided as may suit his discretion; and the same course should be pursued in reference to the superintendent of the capitol appointed by a Democratic Governor. Such superintendent should not be hampered, restricted or embarrassed by dictation as to whom he should employ, any more than any other official or department. So long as the capitol requires completion, an appropriation should be made for it in the usual way without delay or hesitation, the same as other necessary appropriations are made. But instead of making such appropriation, the scheme contained in this bill is devised, and any appropriation whatever is made dependent upon the approval of the whole bill. It is an attempt to legislate in an appropriation bill, and thereby engraft upon it objectionable provisions which shall accompany the appropriation and thus compel the Executive approval of the whole bill or the loss of the appropriation. There should be no such legislation in an appropriation bill. There should be an appropriation made upon its own merits alone. If, for any reason, it is desirable that the law relating to the system of construction shall be changed, let such a bill also be passed on its own merits, if any it has. The two matters should not be blended together, and the failure of one should not be permitted to endanger the other.

If this system of political legislation shall be inaugurated in connection with needed appropriations, the legislature might make an appropriation for the Governor's salary conditioned upon the legislature being permitted to name his private secretary or the messenger in his office. If proper appropriations are to be withheld, because of alleged or fancied grievances against any department or public official, there is an end to good government and an orderly administration of public affairs.

But, in fact, there is no cause for complaint against the present capitol commissioner. He is not a politician, and never has been. In his employment of workmen he has made no distinction on account of politics. He has refused employment to more Democrats than Republicans. At least five times as many men have applied for work as he has been able to employ (the number which he can employ being limited to seven hundred), and this always creates some complaint and criticism. Carefully prepared estimates, made after diligent inquiry, show that (as near as the politics of the workmen can be ascertained) almost three-eighths of those employed on the capitol have been Republicans. This is a greater proportion of Republicans than is usually found among an average gathering of laboring men. But whether there has been a greater number of one party than the other employed, is not the question. It is a question whether necessary appropriations for public buildings are to be arbitrarily withheld, if it happens that an exact equality, politically, is not maintained among the workmen employed. That Mr. Perry has conscientiously sought to discharge his duties properly admits of no question. It is firmly believed that the people of the State have confidence in his capacity and integrity, and that they do not desire to have him displaced because of any mere local controversy in Albany city in reference to patronage.

It will be a matter of regret if, by reason of a disagreement between the legislature and the Executive as to the proper system under which the capitol should be constructed, there should be an entire failure of any appropriation. The best interests of the State require that the capitol, now nearly completed, should be speedily finished. A faithful force of excellent workmen, who have already been idle for the last two months awaiting the dilatory action of the legislature, deserve steady employment, and their interests should not be ignored.

But it may well be doubted whether, if this bill should be permitted to become a law, there would not inevitably arise another disagreement equally serious and disastrous under the peculiar provisions of this bill. It contemplates the employment by the commissioners of construction of a superintendent, who is, however, only to have such powers and authority as may be expressly, from time to time, conferred upon him by them. He must be appointed by the concurrence of a majority of the commission. At the outset there is likely to arise a grave difference, as the Governor and lieutenant-governor, having confidence in the capacity and integrity of Mr. Perry, would unquestionably seek to retain him as superintendent, rather than take the risk of the selection of a new or inexperienced man, while the other commissioners, no matter what their private opinions be, or in how complimentary a manner they may have spoken in the past of Mr. Perry's peculiar qualifications for that position, could not with propriety vote to retain him, having just voted as members of the legislature to turn him out. They could not well stultify their own actions or deliberately disregard the expressed wishes of the majority of the legislature. Hence there would arise a 'dead-lock' at the threshold of the proceedings of the commissioners, which might prevent the commencement of any work whatever. Rather than have a commission which would be in constant variance, and which could only harmonize by making 'deals' with each other with a probability of differences arising which would prevent the resumption of work altogether, it is better that no commission whatever should be created and that the present law should remain as it is. A 'dead-lock' between the legislature and the Governor, while greatly to be deplored, and which should be avoided, if possible, by honorable mutual concessions, is no worse and no more detrimental to all the interests involved than a 'dead-lock' after the creation of a commission. In either case the work must cease, and the completion of the capitol be delayed, and if the course now assumed by the legislature is insisted upon, one result seems as inevitable as the other. If there must be an irreconcilable disagreement upon a matter of this kind, it may as well come now as at any other time.

It may be safely asserted that a commission, if created at all, should not be created so as to need to be changed every year or so. Last year the legislature established an 'advisory' commission for the capitol, in which was included, among other officials, the president of the senate and the attorney-general. The election last fall having resulted in the selection of a Democrat as president of the senate, the Democratic attorney-general is dropped in this bill and the Republican *temporary* president of the senate is substituted in his place. Another year the political complexion of the assembly may change (an event not unlikely to occur) and then in order to preserve the alleged non-partisan character of the commission, another change would have to be made by the substitution of some other Republican State officer, if one can then be found. As a last resort there would have to be selected the superintendent of public instruction or one of the judges of the Court of Appeals.

A changeable commission is neither desirable nor necessary. The history of the capitol prior to 1883, illustrates the fickleness of all legislation upon this subject. Every year or two then witnessed a change in the system or *personnel* of management, for which each party was more or less responsible. Commissions were created, and alternately increased or diminished and then finally abolished, only to be renewed again. A change was made whenever a supposed party advantage was to be obtained. Nearly every State official was at one time or another a member of such commission. There had been commissions of State officers and of private citizens—partisan commissions and non-partisan commissions, one succeeding the other in rapid succession. At one time the list of elective State officers had been exhausted or were not considered of the right politics, and the auditor or mere clerk of the canal department was resorted to, a selection which seemed as ridiculous as it was inappropriate. These constant changes of management hindered and delayed the completion of the capitol and bore fruits of extravagance and abuses. Governor Dix first called attention to this subject, and in his message of 1874 suggested a remedy. He recommended that the construction of the capitol be placed in charge of a single competent builder, with full power unhampered by commissions of any kind.* The legislature, however, at that time did not act upon his advice. But in 1883, his recommendation was adopted by the legislature, it having then been renewed by Attorney-General Russell, then a member of the capitol commission. An act was passed abolishing all commissions and placing the entire construction of the capitol in charge of a single responsible head, who should be a practical, experienced and competent architect and builder, to be appointed by the Governor, by and with the advice and consent of the senate. The measure was an eminently meritorious one. It passed the assembly by a large majority, and there was not recorded against it a single dissenting vote in the senate. At the adjournment of the session, the Republican members of that legislature issued an address to the people in which they spoke of the change as 'a reformation in the manner of constructing the capitol,' and one as 'wise for the State,' and denied that the Democratic party was entitled to any particular credit over the Republican party for the passage of the measure, because it had been 'suggested in advance of legislation by a Republican — the attorney-general.' It is to the repeal of that legislation thus originally suggested by Governor Dix and seconded by Attorney-General Russell, that I most strenuously object. It is immaterial whether it was a Republican or a Democratic measure. It is sufficient that it was a wise measure and has proved beneficial to the State. The building of the capitol has progressed under it with economy, with reasonable rapidity and with unquestioned honesty. The propriety of having

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**Ante*, vol. 6, p. 652.

one responsible head in charge of the construction has been made clearly apparent, and the interests of the State will not be subserved by any change. Whether or not Superintendent Perry, or some other competent builder, shall be placed in sole charge is not the only question now involved. There is a principle at stake, and that principle requires that the construction of a great public work should be placed under the control of one competent head with full power in the premises. There should not be any commission to hamper and annoy him, especially a commission composed of State officers, a portion of whom are already over-burdened with duties, and none of whom are specially qualified for the proper discharge of the duties of such a position.

By the terms of this bill the superintendent who is permitted to be appointed, has no power whatever, except when specially conferred by a majority of the commissioners. He is not even allowed to appoint his own deputy, that power being reserved to the commissioners themselves. The commissioners may thus appoint as deputy a person obnoxious to the superintendent, one in whom he has no confidence and with whom he may desire to have no relations, thus leading to jealousy, rivalry and bickering. The fickleness of legislation is further illustrated when it is stated that last year the legislature expressly prohibited Superintendent Perry from having any deputy whatever, and this year a deputy is particularly provided for, but his appointment is reserved to the commissioners themselves. It would seem as though the legislature of the State of New York ought to be able to find one architect in whom it would have sufficient confidence to intrust with the sole construction of the capitol, including the selection of his own deputy.

The act of 1883 was not designed as a temporary expedient, but was intended to inaugurate a settled policy on the part of the State, and the system then devised, should not be changed for light or trivial reasons. It was considered as a remedial measure and one that should continue until the completion of the capitol. The Democratic party in 1883 had the Executive and both branches of the legislature and could have enacted any system it pleased, but the action which it took was not to obtain any political advantage but to establish a settled and permanent management for the construction of the capitol. Had the election last fall resulted differently, the Republican Governor could have named as superintendent a new architect and builder (with the consent of the senate) had he deemed it his duty so to do. It is safe to assert that had a Republican Governor been elected the present measure overturning the system originated three years ago, would never have been presented or passed.

It is believed that this bill has been persistently urged upon the legislature by a small clique of Albany politicians who have not been able to control or manipulate Superintendent Perry or to use him for their political purposes, and who fancied that its passage would be to their advantage. There is no demand for it in any other portion of the State. The assertion that the 'patronage' of the capitol controls the elections in Albany city is untrue. Albany is a Democratic city, and has been for many years, and the greatest victories of that party have been obtained when there was no work in progress upon the capitol, or when the control of it was in the hands of the opponents of the Democratic party. The recent municipal election is evidence of that fact, when a larger majority was obtained for the Democratic ticket than for many years, and there has been no work on the capitol for over two months.

It is also believed that this measure was devised by its authors with the idea of making the same so objectionable to the Executive that he would be compelled to veto it, and its passage was delayed for over three months, so as to enable it to reach the Executive chamber just before the recent charter election, thereby hoping to compel the Executive to approve it or be forced to veto it a few days before such election, when it was anticipated that a clamor of discontent would be raised which might inure to the political advantage of a few politicians of Albany. The scheme, if any such existed, has miscarried, and the bill is permitted to be disposed of upon its merits, without regard to local considerations of any character.

Irrespective of the question of principle involved in this measure, it is objectionable in many other respects.

The amount appropriated is wholly insufficient to properly carry on the work, being but a little over five hundred thousand dollars. A careful estimate, which I have had made, shows that nearly half of the sum appropriated must be used for the purchase of materials, leaving an amount to be used for labor which will be scarcely sufficient to keep the usual force of workmen employed for over ninety days. If the work must cease in ninety days, it might as well not be begun at all. It should be borne in mind that, by the restrictions contained in the bill, not a dollar can be expended on the outside of the building; the work upon the tower must stop; the capitol park must continue in its present neglected condition; and the capitol approaches must remain uncompleted. These were unnecessary and unbusinesslike restrictions. The whole work should be progressed at once in the interest of economy and propriety. Under this proposed appropriation very few stonecutters could be employed, and other workmen would soon have to be discharged.

It has been asserted that if this bill should be approved, another and larger appropriation would be made. The future can only be judged by the past. The record shows that amendments were offered in each house increasing the amount of the appropriation, but they were repeatedly voted down by a party vote. It cannot be anticipated that appropriations for a single object will likely be made by piece-meal. There has been manifested a disposition from the commencement of the session to refuse any adequate appropriation. The amount mentioned in this bill was originally one million five hundred thousand dollars, but there was evidently no intention to insist upon any such sum, and the figure was gradually reduced from time to time until it reached its present wholly inadequate amount.

The record further shows that many of those who voted for this bill made arguments against making any appropriation whatever for the completion of the capitol and desired to have the work suspended for a few years. They could not have accomplished their object better than by the passage of this bill. The amount appropriated is so small and insufficient, the restrictions are so unusual and inappropriate, and the system inaugurated is so full of defects that it is equal to no appropriation at all, and is a measure that might well have been advocated by those who were opposed to finishing the capitol. The measure is so inadequate to meet what is needed that the bill might well be entitled 'An Act to hinder, delay and prevent the completion of the capitol.'

The bill contains many unnecessary provisions. It was deemed the part of wisdom to provide that the commissioners of construction should not contract any debt or incur any liability in excess of the amount appropriated. This has been the law of the State since the year 1876, applicable to all officials. (See chap. 192 of the Laws of 1876.)

The bill further provides that the commissioners in the employment of workmen should give a preference to honorably discharged soldiers and sailors. It would be their duty so to do without any such provision. There are already two enactments of substantially the same import, requiring this to be done. (See chaps. 312 and 410 of the Laws of 1884.) It does not make this obligation any stronger by reiterating it in another statute. It does not do any more for the soldiers than has already been done. There could have been no object for the unnecessary insertion of this provision, unless it was desired to create the impression that the bill was peculiarly in the interest of the soldier, when in fact it confers upon him no right which he did not previously enjoy.

The bill contains an unconstitutional provision (section 6). It provides that the commissioners shall be allowed and paid their ' disbursements and expenses ' as such commissioners. This is intended to include personal expenses of the commissioners while traveling to attend the various meetings of the commission, and while at Albany or elsewhere on the business pertaining thereto. The State officials who are named as commissioners are made such not as individuals, but by virtue of the offices they hold. They are commissioners *ex-officio.* The constitution regulates their compensation, which is deemed to include their personal official expenses. The legislature cannot add to their compensation in any manner, either in the shape of ' expenses ' or otherwise. The imposition of new duties upon them makes no difference. It is believed that the provisions of the Constitution are sufficiently explicit to prevent any one of these officials from being compensated or reimbursed on account of his personal expenses, but whether or not this be so, they clearly prevent either the Governor or lieutenant-governor from receiving any such reimbursements. The Governor's salary is fixed and determined in the constitution, and he must accept it as a full compensation for all the duties he is required to perform. If he is required to travel from his home or from Albany on executive business, he must pay his own expenses. Formerly the lieutenant-governor received mileage fees for traveling expenses as a member of different boards, but the constitution was amended to cut off any such reimbursement and his salary was increased and it is declared that he ' shall not receive, or be entitled to any other compensation, fee, or perquisite for any duty or service he may be required to perform by the constitution or by law."* This provision cannot be evaded or legislated away. There are decisions in this and other States upon this question which conclusively demonstrate the unconstitutionality of the sixth section of this bill.

The bill is full of imperfections and inconsistencies from the first section to the very last. The last section provides that 'this act shall take immediately.' What it is expected to 'take' is not disclosed. It has taken the legislature three months in which to pass it, and it would naturally be presumed, at least the last section of the bill would be free from defects. This error of composition or engrossing, whichever it is, seems to have escaped the vigilant eye of the new committee on revision of the assembly.

I am compelled by my sense of duty to the State, to return the bill for further consideration on the part of the legislature. Last year, rather than that the work upon the capitol should be suspended and thus delay its early completion and throw out of employment a large number of worthy workmen, I, *in form,* approved a bill relating to the capitol, which *in fact* did not meet my approbation. That bill, while objectionable in many respects, did not, however, violate the principle stated for which I contend, to wit: That the construction of the capitol should remain in charge of a competent architect and builder appointed by the governor of the State, and that such builder should be left free from control by any commission in every essential particular. This bill does violate that principle, and for this and the other reasons stated, it cannot consistently be approved."

The bill was not passed over the veto.

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* As to the Governor, see Const. 1846, art. 4, § 4, am. 1874; the Lieutenant-Governor, art. 4, § 8, am. 1874; the temporary president of the Senate and the speaker, art. 3, § 6, am. 1874; in general, art. 3, § 24, added 1874; art. 10, § 9, added 1874.

April 16. To the Assembly:

Veto of a bill entitled "An act to allow the town board of the town of Colton, in the county of St. Lawrence, to hire, purchase or erect a lock-up."

"By chapter 513 of the Laws of 1872 provision is made by a general statute for building and maintaining lock-ups in the several towns of the State. There seems to be no necessity for the present bill. The electors of the town, by the law aforesaid, have ample power to determine upon the necessity and provide for the erection of the lock-up. If more power is needed in town boards in respect thereto, or if for any reason the present law is too limited, the proper remedy would seem to be by amendments to the general statute. Special legislation should be avoided whenever and wherever possible.

If the town of Colton needs the relief asked for, it should be sought under the general law, or, if that is inadequate, it should be amended so as to meet this and similar wants in other towns of the State. I cannot approve this bill for the reasons stated."

The bill was not passed over the veto.

April 26. To the Assembly:

Veto of a bill entitled "An act to amend the Code of Civil Procedure."

"This act increases the cases in which appeals can be taken to the Court of Appeals. It provides for appeals to that court where the order or judgment appealed from relates 'to the rights, duties or liabilities of public officers,' even though the matter in controversy amounts to less than five hundred dollars. This enlarges very greatly the cases in which appeals can be taken to the Court of Appeals, and no good reason for such change seems to be apparent. It does not appear to be desirable that every question relating to public officers should be permitted to be passed upon by the highest court in the State. I cannot learn that any particular injustice has been done in the past under the existing law, and it should not be changed unless some good result is likely to be attained. It looks as though this amendment was intended to reach some particular case which may be pending in the courts, and, if so, it ought not to become a law. The calendar of the Court of Appeals is already overcrowded with important cases, and until the legislature shall provide some proper remedy for its relief, it is not deemed wise to increase its appellate jurisdiction."[20]

The bill was not passed over the veto.

April 26. To the Assembly:

Veto of a bill entitled "An act to incorporate the Ulster County Loan and Trust Company of the city of Kingston, New York."

"The purpose of this special act is to create a corporation of that particular kind known as a loan and trust company. If the necessity exists for an addition to the number of such corporations already in operation in this State, a general law should be enacted for that purpose. There are at present general laws providing for the organization of banks, of insurance companies and of manufacturing corporations in great variety, and no good reason exists, and no great difficulty stands in the way of extending the list of general laws so as to cover the incorporation of loan and trust companies. The legislature is continually importuned to pass special legislation of the character of this bill, and so long as no general law is placed upon the statute books that importunity will continue.

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[20] As to appeals to the Court of Appeals, see Code of Civil Procedure, sections 190–191, and also Constitution of 1894, article 6, section 9, which among other things abrogated any limitation of the right to appeal based on the amount involved.

This bill before me, as well as several others which are now before the legislature, authorizes, in effect, the doing of a banking business, and for that general reason I am of the opinion that none of the bills referred to should become laws.

As a matter of fact most of the trust companies now doing business in this State engage in direct competition with the banking associations while subject to but few of the restrictions properly surrounding the latter. The distinction between the two classes of corporations is more of a theoretical than practical character. Trust companies as existing are organized under special charters, and their business is primarily to hold funds in trust and act in fiduciary capacities. Their capital, which ought to be large, should, with their deposits, be invested in the best securities. Banks of deposit and discount, on the contrary, are organized under a general law, as required by the State constitution (article VIII, section 4); the theory being that all who wish to do a banking business should be enabled to do so upon an equality, with like privileges and liabilities and under uniform restraints. And while the legislature has the entire discretion of creating other corporations other than banks by special charter, yet 'equality between corporations themselves as well as equality between corporations and individual citizens, so far as the latter was practicable, was in the minds of the convention in framing this part of the constitution.'

So far as can be learned there does not exist any pressing necessity for the organization of additional trust companies, particularly by special act. It is only because their vaguely expressed general provisions permit the corporators to exercise powers in addition to those given by law to banks of deposit and discount, that demand is made from year to year for their incorporation. Of the number of charters granted by the legislature during the past few years, but few have entered upon active business, which would seem to indicate an ulterior purpose in procuring the franchises. It is a fact, as I am informed by the superintendent of the banking department, that one of the most recently granted trust company's charters is now being persistently offered for sale at the sum of $3,000.

Trust companies, too, seem to be specially favored as regards taxation. In New York city the assessed value of the capital of the seventy-five banks of deposit and discount, after allowing all legal deductions, is given at $60,746,294; while the actual par value of the same is but $64,337,700. On the other hand the trust companies of the city with actual capital $12,775,960 are reported therein with but $156,506 of the assessed value of capital.

To show how careful the legislature was in incorporating the first trust company in this State, the following quotation is given from its original charter: 'And also provided that nothing in this act shall be so construed as to authorize the said corporation to receive any deposit or deposits nor to discount any promissory note, bond, due bill, draft, or bill of exchange, nor shall it be so construed as to allow any banking privileges or business whatever.' But by a liberal construction of the powers conferred by an amendment, the company holds to-day deposits of upward of $21,000,000. By no possible interpretation of the provisions of the amendatory act is authority to receive general deposits granted and yet there is reason to believe that no inconsiderable portion of the aggregate deposits held are of that character. And what is true in the case cited is true in the instance of several other companies of like character.

The amendment to the constitution in 1874[k] prohibiting the granting of charters to savings banks was necessitated, because careless legislation had permitted the creation of charters which contain provisions whereby the money of depositors was jeopardized through hazardous investments.

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[k] Const. 1846, art. 8, § 4, am. 1874.

In this connection it may be well to consider a very common provision in the charters of recently created trust companies. It is as follows: 'The trustees shall have a discretionary power of investing the moneys received by them in trust, in public stocks of the United States, or of any individual State, or in the bonds and stocks of an incorporated city in this State, authorized by the legislature or in such real or personal securities as they may deem proper.' This most dangerous provision is also contained in this bill and gives the officers the privilege of making any investments they see fit, even of the most speculative character, and the principal security left for depositors is the integrity of the persons acting as trustees of these corporations.

In addition to these general objections to legislation of this character there are several specific defects in the bill herewith returned.

First. Part IX of chapter 409 of the Laws of 1882, provides for the general conduct and management of loan and trust companies. Section 228 of that law contemplates that no such corporation shall transact business with a capital less than $100,000. The bill before me authorizes a commencement of business whenever $25,000 of the capital stock shall have been paid in. If, in 1882, the general law, applicable to corporations of this character, deemed $100,000 the minimum capital necessary for the conduct of business, I see no reason why one-quarter of that sum should be thought sufficient in 1886.

Second. Section 224 of the statute above referred to requires that every such corporation receiving deposits of money in trust shall make deposits of public stocks to the amount of at least $50,000 with the superintendent of the banking department as security for the depositors with and creditors of such company. This bill before me allows business to be begun when but one-half the amount necessary for such guaranty deposit has been paid in. A guaranty deposit of $50,000 seems small enough when it is considered there are several companies already in existence whose trust deposits are in the millions. I see no reason why a new company should not comply with this most reasonable provision.

Third. For many reasons not necessary to state in detail the business location of a corporation of this character should be specifically defined. This is not done in the bill before me. Including the words ' of the city of Kingston ' in the title of the corporation and providing that notice of election shall ' be by advertisement in two newspapers in the city of Kingston ' does not confine it to that location. These are among the particular objections apparent at first examination.

In conclusion and to save repetition, the attention of the legislature is called to the views expressed on this subject by the superintendent of the banking department and contained in the report to the legislature relative to savings banks for the year 1884. The desirableness of enacting a general law for the incorporation of trust, loan and mortgage companies is therein made most apparent, to the end that the powers, rights and liabilities of all such corporations shall be uniform."*

The bill was not passed over the veto.

April 27. To the Assembly:

Veto of a bill entitled "An act authorizing the construction of an exchange bridge over the Champlain canal, in the village of Fort Edward, and making an appropriation therefor."

" This bill provides for the construction, by the Superintendent of Public Works, of what is known as an ' exchange bridge' over the Champlain canal at Fort Edward. Its construction is not left discretionary with the superintendent, but the bill is mandatory in its provisions. The interests of the State do not require the construction of the proposed bridge. The navigation of the canal will not be promoted by its being built. The bill is for the benefit of a few persons doing business adjoining the canal at this point whose private convenience and interests would be subserved.

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* In 1887 an act was passed, chapter 546, providing for the organization of trust companies, for their supervision and for the administration of their affairs. This subject was afterward included in the banking law of 1892, chap. 689.

The present 'exchange bridge' near the site of the proposed new bridge, is in fair condition, and does not need to be rebuilt.

The provision of this bill that the present bridge shall be 'discontinued and abolished' is not necessary, and is of no particular advantage to the State.

The bill is not recommended or pressed by the canal authorities, and the improvement contemplated by it can be postponed without detriment to public interests. It only appropriates fifteen hundred dollars, and provides that the cost shall not exceed that sum, while the State Engineer and Surveyor reports to me that the expense would be three times the amount named."

The bill was not passed over the veto.

May 3. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *May* 3, 1886.

"The Constitution and the laws of the State impose upon the Governor the duty of nominating to the Senate persons to fill certain offices in the State government, where the terms of the incumbents of such offices have expired, or vacancies exist. Such nominations, however, are subject to confirmation by the Senate, upon which body is also devolved the duty of considering such nominations and of either confirming or rejecting the same within a reasonable time.

About two months since I had the honor of transmitting to the Senate the nominations for the important offices of Health Officer of the Port of New York, Commissioner of Immigration and three Quarantine Commissioners. Such nominations were made to succeed officials whose terms had long ago expired, and some of whom had been holding over for many years. About the same time I transmitted to your honorable body the name of a gallant soldier (Major Charles J. Fox), to succeed a civilian as Trustee of the Soldiers' Home at Bath; also a Special County Judge for Tioga county to fill an actual vacancy, and a Trustee of the Insane Asylum at Utica, to fill a like vacancy. These nominations have neither been confirmed nor rejected, nor have they been considered for a single moment in executive session. The nominees — selected as they were from both political parties — were believed to be eminently qualified for the positions for which they were respectively named, and their selection met the general approval of the public press and of good citizens without regard to party.

Abuses had long existed, as it was alleged and believed, in the management of the Emigration and Quarantine Departments of the Port of New York, and it was hoped that such abuses would be remedied by a change in administration.

The right of the Senate, for good and sufficient reasons, to reject any or all executive nominations, is recognized and conceded, but, with all due deference to the Senate, it is suggested that such nominations are entitled to respectful consideration, and should not be either arbitrarily rejected on the one hand, or arbitrarily refused any consideration whatever on the other. If the nominees upon the most searching investigation of their fitness — which inquiry is unhesitatingly invited — are found to be unworthy in any respect, they should be promptly rejected. If, however, their fitness is conceded or shall be satisfactorily ascertained, it is submitted that it is the plain duty of the Senate with equal promptness to confirm them.

It is your peculiar province to determine what action should be taken in any particular case, and with this prerogative of the Senate it is not my intention to interfere in the slightest degree. But, I beg to suggest that some action, either of consideration, confirmation or rejection, is demanded alike by the Constitution and the laws, and by that courtesy and fair treatment due from a co-ordinate branch of the State government to the Executive.

The session is approaching its close, and the terms of many other officials have expired or about to expire, but the transmission of other nominations may be regarded as a useless and unnecessary task and an idle proceeding on the part of the Executive, if the same course of non-action is to be pursued towards them as has been adopted in reference to those transmitted about two months ago, and which have as yet received from the Senate no consideration whatever.

I respectfully request that the nominations in question may be considered by the Senate at its earliest convenience, as contemplated by the Constitution and the laws tc the end that the Executive may be informed of the judgment of the Senate, and, if the situation shall so demand, be enabled with propriety to transmit other nominations for its consideration.

DAVID B. HILL."

May 4. To the Assembly:

Veto of a bill entitled "An act to amend chapter four hundred and five of the laws of eighteen hundred and eighty-two, entitled 'An act in relation to railroad corporations.'"

"The act of 1882, which this bill seeks to amend, extended the time beyond that theretofore limited within which any railroad company might build its road for a period of two years.

The second section declares that the provisions of the act should not extend or apply to two specified companies, 'or to any corporation or company that has already commenced the construction of its road.'

By the present bill the words 'or to any corporation or company that has already commenced the construction of its road,' are stricken out of section 2 of the act of 1882, and the provisions of the latter act are thus made to apply to railroad companies who have already begun the construction of their roads. No good reason is shown why the application of the act of 1882 should be extended.

The general Railroad Act makes it the duty of every railroad company to build and complete its road within ten years from its organization, and ordinarily it would seem that such length of time would be sufficient to enable it to comply with this statutory regulation.

Presumably the capital of this company, if paid in money and honestly expended, would be sufficient to build the road. But it not infrequently happens that only the bare ten per cent. required upon organization is ever paid in, and the company waits until confiding capitalists or interested localities can be induced to loan the money necessary to carry on the enterprise, and before the scheme can be consummated, the statutory limitation is likely to expire.

In another class of cases a company is evidently formed for the avowed purpose of building a road between specified points or over a designated route, but without any sincere intention of ever actually performing the work, but for the sole object of preoccupying the ground and compelling any company subsequently formed, which might actually desire to build and operate a road over the same route, to purchase the franchise of the old company at an exorbitant valuation. Such cases certainly do not commend themselves to the favor of the law-making power.

Still a third class of cases remains to be considered. Before the adoption of the constitutional amendment prohibiting local aid,[1] many railroads were projected and partially built at the expense of the towns and municipalities through which they were expected to run. The municipality was induced to incur a heavy bonded indebtedness for that purpose, and with the expectation of reaping some return in the way of the advantages which railroad communication would confer, and usually upon the express pledge or promise of the company that the money should be expended in constructing the road through the town which had been bonded to raise it. Some show of work would be made upon the located line within the limits of the town, until the authorities could be persuaded to deliver their bonds to the company, when the work would be abandoned, and the tax-payers involved in ruinous taxation without any compensating benefits. Many such hard and inequitable cases may be found in different parts of the State. Good faith requires that the railroad company making these pledges should be compelled to keep them or surrender the franchise which they have so dishonestly used, and the time now allowed by law for redemption of their promises is ample and should not be extended.

If there is any meritorious case where a railroad company, without any fault on its part, has been unable to complete its road within the prescribed time, it might properly be provided for by legislation; but any bill upon the subject should, in my judgment, exclude all companies whose capital stock has not been fully paid in and actually expended, and all companies, where the unfinished portion of the road passes through towns and municipalities which have been bonded to aid in its construction."

The bill was not passed over the veto.

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[1] Const. 1846, art. 8, § 11, am. 1874, 1884.

May 11. To the Assembly:

Veto of a bill entitled "An act in relation to payment of teachers' wages in school districts of this State."

"Trustees of school districts already have all the power (by section forty-nine of title seven of the general school law, chapter five hundred and fifty-five, laws of eighteen hundred and sixty-four, as amended), proposed to be given them by this bill, except that, under the existing law, their exercise of the taxing power to raise money to pay teachers' wages is conditioned upon their having first applied all the school money apportioned to the district and legally applicable thereto towards the payment of such wages. The power of boards of education of union free school districts is limited in the same manner. It seems to me to be a wise limitation, and I see no sufficient reason for removing it.

The bill is not approved of by the Superintendent of Public Instruction."

The bill was not passed over the veto.

May 12. To the Senate:

Veto of a bill entitled "An act in relation to gas companies in the city of New York."

"I have this day approved the "Thomas Bill' (so-called), which provides a general law for the incorporation and management of gas companies in New York city. [Chap. 321.]

This bill will enable new companies to freely organize, and removes many unnecessary restrictions and hindrances which have heretofore prevented competition in the manufacture of gas. It will effectually destroy whatever monopoly has existed in this business in the past and cannot help proving beneficial to the people.

The provisions of the bill are free from serious objections and are cheerfully approved.

I have also this day approved the 'Reilly Bill' (so-called), which fixes the price of gas to be hereafter charged in the city of New York at the sum of one dollar and twenty-five cents per thousand cubic feet. This price is to govern all companies now or hereafter organized.

The effect of this bill will be to bring immediate relief to the gas consumers of New York city, bringing down the price from one dollar and seventy-five cents to one dollar and twenty-five cents per thousand cubic feet. This is all the reduction that has been insisted upon by any one at the present time.

The bill is simple but effective in its provisions.

It has been established by evidence that the price of gas can safely be reduced, and that the sum of one dollar and twenty-five cents per thousand cubic feet is a fair and reasonable compensation and all that ought to be charged at this time.

The two measures which I have approved will, it is believed, relieve the people from the unjust exactions from which they have suffered in the past, and will not injuriously or disastrously affect any gas company.

I regret that I am unable to approve of the present measure known as the 'Murphy Commission bill.' It provides among other things for a gas commission, consisting of three persons, to regulate and control the affairs of gas companies in the city of New York.

It has been asserted that the bill was intended to be similar to the act creating a State board of railroad commissioners, and not to confer greater powers. If this be so it has signally failed.

The bill gives the commissioners extraordinary powers and is unprecedented in its character. It invests the commissioners with judicial functions and the power to destroy property amounting to many millions of dollars. It confers powers in reference to gas companies which the legislature never deemed it wise to give to the railroad commission over the railroads of the State.

The rush of important bills upon me during the closing days of the session is so great that I have the time to point out but a few objections, which render the approval of the bill impossible.

The propriety of establishing a gas commission, with limited powers carefully guarded, without the prerogative of exercising judicial functions or the right arbitrarily to destroy property represented by stock and bonds in the hands of concededly innocent holders, will not be disputed.

But this bill goes much further than that, and it evidently has not received from the legislature that careful consideration which so important and radical a measure deserves. It assumes to give the commission power to discriminate between companies as to the prices which each may charge for gas. (See Sec. 12.)

This is not deemed a wise provision. The price of gas should be uniform. There should be no opportunity for favoritism or unjust discriminations.

What the people of New York city want is cheap gas and that is given them by the "Reilly bill" already approved.

If it shall be hereafter established that the price fixed by that bill ($1.25) can be safely reduced without detriment to the just rights of any gas company it can easily be done.

It will be seen that under this same section the commission would have the power to change the price or rate to be charged for gas as frequently as they might desire within any year and in fixing the rate, to discriminate as between the companies, allowing one company to charge a greater rate than is permitted to its rival corporation. Clearly this would open the door to a species of favoritism under which one company might be built up, while one not favored by the commissioners could be driven out of business. It is no answer to say that plenary power conferred by this section would not in all probability be abused. No such power should be vested in any board and even the possibility of the unjust exercise of such a power is to be guarded against.

The sweeping provisions of the tenth section of the bill render it doubtful whether the conditions and agreements which have been heretofore exacted by the local authorities or by statute from companies previously organized and proposing to lay pipes in the streets are not wiped out and of no value to the city. In one instance a stipulated payment to the city treasury is provided and promised by the conditions exacted as aforesaid for every foot of pipe laid in the streets, and there would seem to be no good reason why the companies should be relieved in the future from all these obligations towards the city which they have heretofore assumed.

It is difficult to determine just what dividends are permitted under the fourth section of the bill, so vague and complex is the language employed. It would appear that under the concluding paragraph of the section, companies affected by the act which have not hitherto paid dividends on an amount equivalent to ten per cent. per annum from year to year since the time of their organization, are permitted to pay in the future, in addition to a dividend of ten per cent. per annum, "such further dividends from time to time as may be equivalent to ten per cent. per annum, and no more, upon the actual capital paid in, expended and employed, and stated and certified to." It is alleged that none of the companies now in existence have paid dividends amounting to ten per cent. per annum from year to year since the time of its organization, nor could it have been expected that any of them would do so. And yet, under the fourth section of this bill their failure to do so is made the pretext for allowing them to now pay dividends aggregating twenty per cent. upon their capital in a single year. Certainly there can be no justification for any such legislation.

The people want some relief, but they are not committed to the details of any particular measure. If it is desirable to establish a gas commission, somewhat similar to the railroad commission, the measure should not be limited to the city of New York, but should be applicable to the whole State. There are complaints in nearly every interior city of the State of unreasonable charges by gas companies, which may or may not be well founded.

The propriety of a State commission rather than a local commission applicable to the city of New York alone, is very apparent. It would be deemed improper to establish a local department or commission for banks, railroads, dairy interests, or for insurance companies located in the city of New York. They are now under the supervision of State departments or commissions, and no good reason seems to exist why the gas companies in that city should be favored or prejudiced by a local commission any more than these other interests. There is no greater demand for the regulation and control of gas companies coming from the city of New York than there is from many other localities of the State, and yet, for reasons not stated and difficult to comprehend, the legislature proposes that any remedy for existing abuses shall be restricted to the city of New York.

If the other measures which I have this day approved do not prove adequate for the protection of the people, then the better way out of the difficulty presented by the over-charges and other reprehensible methods of existing gas companies, is the establishment of a State gas commission* modeled after the State Railroad Commission, with powers of investigation into any abuses complained of, and such commission should be required to report their recommendations as to the proper remedies to be applied, to the legislature.

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* A state gas and electricity commission was established by L. 1905, chap. 737. The commission was abolished by the public service commissions act of 1907, chap. 429, and its powers were vested in the latter commissions.

There is another objection to the present bill. It provides that the commissioners shall be appointed by the mayor, the comptroller and the chief justice of the court of common pleas. This is clearly improper. The local commissioners should be appointed by the mayor alone. As the chief executive of the city he is the proper official for the exercise of such a power.

I am strenuously opposed to conferring appointive or administrative powers upon judicial officers. The judges of our courts should be kept free from such influences and should not be subjected to the importunities incident to the exercise of such powers. I doubt both the wisdom and the constitutional power of the legislature to impose such a burden upon judicial officers whose functions are prescribed by the constitution itself.

It is apparent that the present measure has been passed by the legislature in the whirlwind of excitement incident to the very proper demand of the people for cheap gas, but it is also evident that its provisions have not been carefully prepared and that further consideration will be beneficial to all the interests affected."

The bill was not passed over the veto.

May 12. To the Assembly:

Veto of the following items in the supply bill, chapter 330.

" 'For the Hudson River Telephone Company, for rental of telephone for the Senate for one year from March fourth, eighteen hundred and eighty-six, sixty dollars.'

This item is objected to and not approved. The regular appropriation for contingent expenses of the Legislature is ample and applicable for this expense. The rental of the telephone for the Assembly is paid out of that contingent fund and no good reason exists why a special appropriation should be made in this case.

'For the purpose of extending dairy knowledge and science; for editing, printing and distributing the same among the people of the State, one thousand dollars, to be expended under the direction of the board of managers of the New York State Dairymen's Association, for the year eighteen hundred and eighty-six, upon vouchers to be approved by the comptroller.'

This item is objected to and not approved. The very liberal appropriations for the department of the State dairy commissioner seem to render unnecessary and inexpedient other and additional expenditures for purposes of the same general character.

'For the purchase of law books for the office of the State superintendent of public instruction, to be expended under the direction of said superintendent, five hundred dollars.'

This item is objected to and not approved. This expenditure, if proper to be made at all, should be made from the regular appropriation for contingent expenses of the department of public instruction. The appropriation bill provides two thousand dollars for furniture, books, binding, blanks, printing and other necessary expenses for that department.

'The unexpended balance of the appropriation of eight hundred dollars, provided in chapter five hundred and fifty-one of the laws of eighteen hundred and eighty-four, for removing the State standards of weights and measures to the new capitol, and for other necessary expenses of the superintendents of weights and measures, is hereby reappropriated for the same purposes, to be paid upon vouchers to be approved by the comptroller.'

This item is objected to and not approved. Article 7, section 8 of the Constitution provides that 'every law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix the sum.' The amount intended to be appropriated by this item is not distinctly specified.

'For the payment of an award made by the board of claims, April fourteenth, eighteen hundred and eighty-six, in favor of Alexander Kennedy, for services as auction agent of the State of New York, from October first, eighteen hundred and eighty-five, to February first, eighteen hundred and eighty-six, the sum of four hundred dollars.'

This item is objected to and not approved. The appropriation is unnecessary, as I am informed by the comptroller that the award has already been paid.

'For the comptroller, for payment in full for legal services rendered by counsel to the special committee appointed to investigate Tontine insurance, under a resolution of the Assembly passed March twenty-six, eighteen hundred and eighty-five, three hundred dollars.'

This item is objected to and not approved. No reason exists why it should not be paid from the contingent fund appropriated for the expenses of the legislature which is or should be amply sufficient for all such purposes.

'For the trustees of the State library, for arranging the Clinton manuscripts and other State papers belonging to the State and deposited in the library, the sum of three thousand five hundred dollars, or so much thereof as shall be necessary.'

This item is objected to and not approved. The motive for placing in the supply bill for the five past successive years has been in order to compensate the son of one of New York's most eminent and beneficent citizens for work performed for the State in his declining years. Now that this son, Judge George W. Clinton, is no longer living, there seems to be no reason for perpetuating the appropriation. There has been for several years and is now in the employ of the trustees of the State library a salaried assistant, whose duties are understood to be the editing of manuscripts belonging to the State. He is well compensated for his duties, and I see no reason why the work of arranging and indexing, or whatever remains to be done in connection with the Clinton manuscripts, should not be performed by him. The Clinton manuscripts, now in the possession of the State, were purchased for the sum of two thousand eight hundred dollars. Over twelve thousand dollars has already been expended in the nominal work of indexing and arranging them, and this amount would seem to be amply sufficient and a fair allowance for the purpose, and the work should have been completed. It is not deemed wise under the circumstances stated to continue this appropriation longer.*

'For completing dredging of the channel of Catskill creek, under the direction of the superintendent of public works, the sum of three thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved. Last year the supply bill contained an appropriation of the same amount for the same purpose. It was not understood that this was to be a continuing appropriation. There seems to be no good reason why the State should be continually dredging the channel of this creek. The interests of commerce and navigation can be better served by expenditures of moneys in other directions. It is believed that the appropriation is made more in the interests of private parties than in the interest of the public.

'And for binding and for necessary expenses in preparing for removal of books, papers and records of his office to the new capitol building, five hundred dollars.'

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* For a note on the Clinton papers, see *ante*, vol. 7, p. 808.

This item is objected to and not approved. The rooms assigned to the State treasurer in the Capitol are not completed, and from present indications there will be no need of an appropriation of this character for at least a year.

'For the commissioners of fisheries, for the purchase of additional land adjacent to and for the use of the Caledonia Fish Hatchery, three thousand dollars.'

This item is objected to and not approved. The appropriation bill contains an item of $26,000 for the general work of the commissioners of fisheries, and it is believed that this should be sufficient. A further appropriation does not seem necessary or desirable at the present time.

'For the commissioners of fisheries for the purpose of establishing and carrying on a fish-hatching station at such locality in Jefferson county and in such waters connecting with or adjacent to Lake Ontario, as such commissioners may select for the purpose of propagating food fish for the public waters of this State, the sum of four thousand dollars, to be paid upon vouchers to be approved by the comptroller.'

This item is objected to and not approved for the reasons stated in objection to the next preceding item.

'For the purpose of improving the navigation of the Saugerties harbor and creek, five thousand dollars, two thousand dollars of such sum to be used for removing the bank of sand accumulated on the north side of such creek or harbor, lying between the eastern end of the dock formerly owned by John Field and the dock of Burhans & Brainard, to make eight feet of water in said harbor at low tide where said bank of sand now lies; three thousand dollars of the same to be used in removing the sand accumulated in the channel of said creek from Magazine Point to the mouth of the creek, and to make the same eight feet deep at low water, said work to be performed as soon as practicable after the opening of navigation, the whole of such sum to be expended under the direction of the superintendent of public works.'

This item is objected to and not approved. There seems to be no good reason why the public moneys should be expended for this purpose. The interests of commerce at this place do not seem to be sufficient to justify any such appropriation.

'For Julia A. Westbrook, widow of the late Theodoric R. Westbrook, late justice of the Supreme Court, eighteen hundred dollars, it being the amount of his salary for the quarter beginning October first, eighteen hundred and eighty-five, on which quarter he had entered upon his duties at the time of his death.'[21]

This item is objected to and not approved. It is conceded that the widow or the representatives of the late Judge Westbrook are entitled to the amount of the salary which was due him at the date of his death. Any further salary was, of course, not earned, and under such circumstances the granting of any additional sum becomes a mere gratuity, the granting of which is believed to be prohibited by the Constitution.[m] If not strictly within the constitutional prohibition, the granting of gratuity would create a bad precedent, and one which should not be established. I have heretofore been compelled to disapprove items similar in character for the widow of Henry Gallien and for the widow of William W. Pierson. The principle involved in all these cases is the same, and I do not see how I can consistently reverse the decision which I have previously made.

'For completing the wall authorized to be constructed by chapter five hundred and fifty-one of the laws of eighteen hundred and eighty-four, along a portion of the bounds of the inclosure of the yard at Clinton prison, the sum of twenty thousand dollars, or so much thereof as may be necessary, to be expended under the direction of the Superintendent of State Prisons.'

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[21] See 1880, note 20, *ante*. vol 7, p. 449 referring to an act making an appropriation to the widow of Chief Judge Church of the Court of Appeals.

[m] Const. 1846, art. 8, § 10.

This item is objected to and not approved. Last year an item in exactly the same words was approved by me, and it was then understood that twenty thousand dollars would complete this wall. I see no reason why the work should not have been completed with the sum named. Before any further appropriations are made, it should be ascertained what the total cost of this work is expected to be, and whether the money already appropriated has been properly expended.

'For printing in German three thousand five hundred copies of the Governor's message, pursuant to concurrent resolution of the legislature, passed February third, eighteen hundred and eighty-six, two hundred and sixty-seven dollars and seventy-four cents, to be certified by the Governor and the clerks of the Senate and Assembly, that the same has been printed and delivered.'

This item is objected to and not approved. No necessity exists for a special appropriation for this purpose. Funds are already provided and are in the comptroller's hands for whatever printing is legally ordered by the legislature or is authorized by law.

'For printing testimony for the special committee of the senate appointed May fifteenth, eighteen hundred and eighty-five, to investigate consolidated gas companies of the city of New York, one thousand five hundred and nineteen dollars and fifty cents, to be paid upon the certificate of the chairman of the committee that the work was done and delivered and on the audit of the comptroller.'

This item is objected to and not approved. It is a proper charge against the regular contingent appropriation for legislative expenses and no necessity exists for a special appropriation for the purpose.

' For lithographing and printing in colors, one thousand copies of the geological map of the State of New York, one hundred for the State geologist, and nine hundred to be distributed by the Secretary of State to such public schools and other educational institutions as he shall direct, two thousand five hundred dollars, to be paid on the certificate of the Secretary of State and State geologist, that the same has been properly executed and delivered, and on the audit of the comptroller.'

This item is objected to and not approved. I see no reason at this time for the expenditure of the public funds for this purpose.

' The appropriation for legislative printing made by chapter two hundred and forty of the laws of eighteen hundred and eighty-five shall apply for payment of legislative printing done under contract or by direction of the legislature.'

This item is objected to and not approved. Appropriations for the legislative printing of eighteen hundred and eighty-six have already been made and a contract for a performance of the same is in existence. There is no necessity at present for additional legislation on the subject.

' For the commissioners of quarantine, for care, maintenance and repairs of the quarantine establishment, ten thousand dollars.'

This item is objected to and not approved. Last year ample appropriations were made for all needed repairs at the quarantine establishment, and it is not believed that further expenditures are necessary for that purpose.

Whatever can be shown to be necessary for the proper maintenance of the department I would cheerfully approve.

'For the completion of the monument at Schuylerville, Saratoga county, erected in "commemoration of the decisive battle of the Revolution and the surrender of Gen. Burgoyne, on the seventeenth day of October, seventeen hundred and seventy-seven;" and for fencing, walling and leveling the grounds around the monument, the sum of ten thousand dollars to be expended under the supervision of the president and board of trustees of the Saratoga Monument Association, upon vouchers to be approved by the comptroller, and upon the execution by said president and trustees, or some of them, of a bond to the people of this State, to be approved by the comptroller, conditioned that the sum hereinbefore appropriated and other funds to be available this year will fully complete the work on and about the monument as herein mentioned.'

This item is objected to and not approved. It is not believed that the Constitution authorizes the appropriation of moneys for private purposes, or where the moneys are to be used for the benefit of private associations.[n] While the object of this appropriation is a very worthy one, the association in control of the monuments is a private association, and the State has no control over it. The State has no legal interest in the monument nor any control over its grounds and under such circumstances an appropriation cannot legally be made.

'For the comptroller, to be expended under the supervision of the officers of the Gettysburg Battle Field Memorial Association, "for the erection of suitable monuments to mark the positions occupied by New York troops in the battle of Gettysburg," and for the erection of such monuments, five thousand dollars.'

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[n] Const. 1846, art. 8, § 10.

This item is objected to and not approved. It is not believed that the Constitution authorizes the appropriation of moneys for private purposes, or where the moneys are to be used for the benefit of private associations.[o] While the object of this appropriation is a very worthy one, the association in control of the monuments is a private association, and the State has no control over it. The State has no legal interest in the monuments nor any control over the lands which the association proposes to acquire, and under such circumstances an appropriation cannot legally be made.

'For necessary sanitary expert work of the State board of health up to September thirtieth, eighteen hundred and eighty-six, to be paid by the treasurer on the warrant of the comptroller, upon bills duly certified by the secretary of the board, the sum of three thousand dollars.'

This item is objected to and not approved. I see no reason why this work should not be paid for — as are other miscellaneous expenses of the State board of health — from the regular appropriation provided for the maintenance of the board."

The items were not passed over the veto.

May 18. To the **Senate**:

"EXECUTIVE CHAMBER,
ALBANY, *May* 18, 1886.

"An act has been passed by the legislature, which is now under consideration by me, entitled 'An act to provide for putting in permanent and most useful form the records and results of the State survey and for preserving the same.' [Ch. 414.]

The act requires certain duties to be performed by the commissioners of the State survey. Without expressing any opinion upon my part as to the propriety of continuing the State survey, I assume that it is my duty to make what has already been done by the State survey of practical use to the people of the State. There are three vacancies in the present board of commissioners. There has been found great difficulty in the past in securing gentlemen who were qualified and willing to accept the position. If the bill in question which is now before me is to become a law (and I see no objection to it in its present form), it is desirable that the vacancies should be filled,—otherwise a quorum cannot be obtained except with great difficulty to carry out the provisions of the act. Under these circumstances I transmit the following nominations:

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[o] Const. 1846, art. 8, § 10.

To be Commissioners of the New York State Survey—David M. Greene, of Troy, in the place of George Geddes, deceased; David John Johnston, of Cohoes, in the place of John D. Van Buren, Jr., declined, and Samuel B. Ward, of Albany, in the place of Theodore M. Pomeroy, failed to qualify.

DAVID B. HILL."

May 18. To the Assembly:

Veto of the following item in the appropriation bill, chapter 413.

"'For the legislative printing for the State, done under contract or by direction of the legislature, including binding, mapping, lithographing and engraving, publication of the official canvass and official notices provided for by law, which are subjects of contract, $60,000.'

This item is objected to and not approved.

The words, 'or by direction of the legislature,' which have been interpolated therein, render it objectionable. These words have evidently been inserted for some unusual purpose or to accomplish some result not apparent upon the face of the item. They are not to be found in the appropriation of last year for State printing, or in any previous appropriation bill for the same object.

The judicial tribunals of the State have repeatedly held that the legislature cannot by joint resolution, or by a ' direction ' expressed in any other manner than by statute, authorize the creation of a debt or incur an obligation for State printing. The law requires that the State printing shall be done under a contract to be entered into by certain State officers. The legislature has the right to appropriate moneys to meet an indebtedness incurred under such contract. It cannot appropriate moneys for any other State printing not authorized by law. 'The direction of the legislature,' and that alone, is not an authority recognized by law. A joint resolution of the two houses authorizing printing to be done outside of the legal contract has no binding or legal effect.

It follows that the legislature cannot appropriate moneys for any printing authorized only by ' direction ' of the legislature, but not authorized by law or done under legal contract.

The item being objectionable in this particular renders necessary a disapproval of the whole appropriation for State printing."

The item was not passed over the veto.

May 18. To the Assembly:

Veto of a bill entitled "An act to amend chapter two hundred and fifty-seven of the Laws of eighteen hundred and sixty-four, entitled 'An act to revise and consolidate the laws in relation to the village of Ithaca, in the county of Tompkins.'"

"The sole object of this bill is to provide for the establishment of a Police Department or Board of Police Commissioners in the village of Ithaca, who shall assume entire management of its police, independent of the village trustees. It contemplates the appointment of four commissioners, who, together with the president, shall constitute a board of five persons. I am informed that there are only five policemen in Ithaca at present, which number is claimed to be sufficient and is all that the taxpayers desire or require.

To constitute an elaborate board of five police commissioners to manage or control only five policemen, is believed to be an unnecessary and unwise measure.

The present force is under the supervision and direction of the board of village trustees, and it does not appear that such board is not competent to successfully manage such force, and there are no complaints that the force itself is not capable and efficient. Ithaca is usually a quiet village, and its citizens are law-abiding and orderly members of society. They do not require extraordinary police protection. No great harm can accrue if the management of its police department shall remain as now provided by law for some time to come, or at least until Ithaca shall become a city and assume a city government.

It is not believed that the citizens of Ithaca really desire the measure, and for this reason, and the grounds before stated, I cannot approve the bill."

The bill was not passed over the veto.

May 20. The Legislature adjourned without day.

MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

March 16.

Memorandum filed with Assembly bill, chap. 56, to enable an assessment to be made in the town of Milo, Yates county. Approved.

"I approve this bill with considerable reluctance. It is special legislation, but the difficulties in which the town of Milo seem to be involved, tend to make the legislation desirable. The act must not, however, be regarded as a precedent for future legislation. The exigency of the situation which leads to the enactment of this bill is the only reason why it is approved at this time."

March 17.

Memorandum filed with Assembly bill, chap. 61, to establish a water department in Syracuse. Approved.

"There seems to be no good reason why this bill should not be approved. In the shape in which it has finally been perfected, every reasonable objection to it appears to have been obviated. In brief, the bill provides for the submission to the people, at a special election, of the question of bonding the city for the maintenance of a water department and the operation of water-works to be owned by the city.

It has been urged that such an important matter should be determined at a general, rather than at a special election, but there is little force to this objection. Such questions should be kept separate from political issues, and should not be permitted to embarrass general elections. The question is not a political one, and ought not to be made so. It is purely a matter of local administration and government concerning which citizens of each party may well differ, and it is always customary to submit questions of this nature at special elections, where they can be disposed of on their own merits, unprejudiced by other issues. The expense of such special election is trifling, when the importance of the subject is taken into consideration.

The form of the ballot has been amended, so that it is no longer misleading. It now correctly states the true issue, and is as follows: 'Shall the City of Syracuse establish and maintain a water department and incur the necessary indebtedness for such purpose by the issuing of bonds therefor?'

The question of bonding is thus fairly presented to the electors. Each voter can understand precisely the nature of the issue, and can vote accordingly. It is difficult to see what more is desired.

The date of the election, as fixed in the original bill, has been changed to the fourth Tuesday of April next. This will give ample time for a full and intelligent discussion of the project. If the people of Syracuse desire to bond their city to the extent of a million and a half of dollars, they are given the opportunity of doing so. Whether such bonding is a wise or imprudent thing to do, is not the question before me. That matter must be determined by the people themselves, and there can be no reasonable objection to a bill which calls for an expression of their opinion upon that point.

The bill provides that the general election laws of the State shall apply to this special election. This will, therefore, require the polls to be kept open from sunrise to sunset, and on April twenty-seventh the sun will rise at five o'clock in the morning, and set at six o'clock and fifty-five minutes in the evening. Every workingman in the city will thus have ample time to record his vote upon this question, either in the morning or evening, without losing a moment's time from his work. This is all that any person can properly ask and should be satisfactory.

The bill, since it originally passed, has also been amended by making the 'Water Board' non-partisan in its character and providing for its continuance in that form. Upon the public hearing had before me upon the bill there was no objection raised to the competency, integrity, or other qualifications of the gentlemen named in the bill as commissioners. It was substantially conceded that they fairly represented the two principal political parties of the State, and that there were no personal objections to them. If there were personal objections to either of them, they should have been raised at that time, when the objections could have been examined and probably obviated.

The bill might have been better worded in some particulars, but as a whole it seems to be a fair measure, and reasonably free from just criticism. It passed the legislature unanimously, or nearly so, and is supported by all the representatives from Syracuse in the Legislature.

Under all these circumstances, I think it is my duty to approve the bill, and I do so annexing to such approval this explanation."

April 24.

Memorandum filed with Assembly bill, chap. 195, fixing the salary of the clerk of Monroe county. Approved.

"This bill changes the system of conducting the office of county clerk of Monroe county from a fee office to a salaried one. It fixes the salary of the county clerk at the sum of six thousand dollars, which sum is to be audited and allowed by the board of supervisors of the county.

Last year I declined to approve bills relating to the county clerk and register of Kings county, which involved a like change of system, because the bills were defective in not having a definite salary fixed in them. I placed my disapproval of those bills distinctly upon that ground and upon no other. The bill is free from that objection, and I have no hesitation in approving the same.

The propriety of the change is regarded by some people as an experiment, but as the people of Monroe county seem desirous of trying such experiment, and the bill being perfect in form, I have no objection to their doing so.

The bill is similar to one approved by me last year relating to the office of the county clerk of the county of Erie, which was free from the objection contained in the Kings county bills."

May 11.

Memorandum filed with Senate bill, chap. 309, providing for an additional evening high school in the city of New York. Approved.

"I declined to approve this bill when it was first presented to me because it was mandatory in its provisions, and 'directed,' rather than 'authorized' the establishment of an additional evening high school. I believe that the legislature should not dictate to the local authorities what schools they should establish, as such dictation or direction in such and similar matters is a violation of the principle of home rule for cities for which I contend.

The bill has since been recalled and amended and it now authorizes and empowers the Board of Education to establish such school on the east side of New York in either one of certain wards specified in the bill. The propriety of the Board of Education establishing such a school at the request of the citizens in that locality seems very clear. While I do not think it wise for the legislature to absolutely direct it, it is believed that although it is left by the legislature discretionary with the Board, that its establishment in the near future will not be a matter of doubt. The Board will unquestionably regard this act as a sufficient indication of the desire of the legislature that the existing public sentiment in favor of such a school shall not be ignored, and it may be assumed that upon proper application, the Board of Education, if it can consistently, will cheerfully comply with the wishes of the citizens. It was with that understanding and in that view, and because of the reasons aforesaid, that this bill was permitted to take its present shape."

May 11.

Memorandum filed with Senate bill, chap. 312, the Arcade Railroad act. Approved.

"This bill passed the legislature by a nearly unanimous vote. It was introduced reasonably early in the session and bears evidence of having received careful consideration. Its passage is in response to a general demand for an increase of the facilities for rapid transit in New York city. That demand is universal and cannot longer be ignored. Neither the Broadway Surface road nor the Elevated railroads, nor any other present means of travel solve the problem of rapid transit. Every channel of communication from one end of Manhattan Island to the other is uncomfortably crowded with passengers, and the people demand some relief. There is a wide-spread and deep-seated conviction among the citzens of New York that an underground railway under Broadway will afford that relief and that the experiment should be tried. There has existed for many years a kindly feeling among the people for the Arcade plan which has found expression in repeated acts of the legislature, conferring upon the Arcade company from time to time additional and much needed corporate rights and privileges. If the approval of this bill will aid in securing rapid transit for New York city, it should be readily signed, especially in view of the unanimity of its passage in the legislature and the evident desire of the people that the project should have the opportunity of being thoroughly tested.

Last year I felt compelled to withhold my approval from a bill for an underground railway under Broadway which was then presented to me. It reached me for consideration after the adjournment of the legislature and when there was no opportunity for modification or amendment. It was defective in many particulars, (unnecessary to be here specified), and I was unable to approve it. But one of the principal grounds upon which I then refused my assent, was the indecent haste and unprecedented and objectionable manner in which it was rushed through the legislature, with little or no opportunity for its opponents to be heard before the committees of either house.

That objection does not exist this year. The opponents as well as the friends of the present measure have had a patient and reasonable hearing in each house, and the bill is properly before me to be disposed of on its merits, freed from the objectionable features which accompanied its passage last year.

The present bill also differs in divers essential particulars from the one vetoed by Governor Cleveland.* That bill provided for the occupation of Broadway, underground, from the property line on one side to the property line on the other — or in other words for substantially the whole space between the buildings. This bill limits the occupation to forty-four feet.

That bill did not adequately protect the rights of property owners or the interests of the city; but this bill does afford such protection in every substantial particular, as will readily be seen by an examination and discussion of its various provisions.

I am asked by the opponents of the bill to decide that not only is this act unconstitutional, but that also is chapter 454 of the Laws of 1881, relating to the rights and privileges of this same company.

It is not deemed to be the province of the Executive to refuse his approval of measures solely upon the ground of their alleged unconstitutionality except in those rare instances where he is clearly satisfied that the point is well taken. If the question is doubtful, the bill should have the benefit of the doubt. Every presumption is in favor of the constitutionality of an act of the legislature, and unless the Executive has no doubt of its unconstitutionality he should leave its validity to be determined by the judicial tribunals.

I am not satisfied that any of the measures in question violate any provisions of the constitution. In my opinion the provisions of the general railroad act did not control this company so far as the time for the commencement and completion of its railroad was concerned, but that such time was regulated and governed by the provisions of the special acts relating to this particular company and which were inconsistent with the provisions of the general law. It is believed that it was the clear intention of the legislature by its various acts to provide a distinct and separate scheme for the construction of this railway, upon conditions both as to time and otherwise, which should be independent of any other laws and which if not independent of them, would defeat "the purposes of its incorporation."

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*_Ante_ vol. 7, p. 1031.

The present act expressly assumes to give that construction to previous legislation, and the right of the legislature to interpret its own enactments is well established, and where the construction by the courts may be doubtful, such legislative interpretation is entitled to great weight and is usually controlling. A great private enterprise, which may prove of incalculable benefit to the public, should not be impeded by a technical or narrow view of its corporate rights.

Neither am I satisfied that the buildings upon Broadway will be endangered by an underground railroad constructed as contemplated by this act. The statements of the best engineers in the country must be accepted upon this point, and while differing in minor details as to the best methods of procedure, they nearly all unite in asserting that such a railroad is practicable and feasible, and that with the exercise of reasonable care in its construction there is little or no danger of any substantial or material injury to any adjoining buildings. The feats which have been accomplished by the skillful engineers of our country are wonderful indeed, and it is unsafe for any one to predict their failure in almost any undertaking which they may attempt.

It would be improper upon my part to set up my individual opinion upon this subject, against the testimony of distinguished experts. If the construction of this railroad be an 'experiment' simply, it may as well be tried now as at any other time. Prudent capitalists seem to be willing to invest their millions upon the faith of the enterprise, and in reliance upon the judgment of skilled engineers as to its feasibility, and the legislature having, with substantial unanimity, given its consent to the scheme, I do not conceive it to be my duty to again defeat the project by withholding my approval. The enterprise may turn out to be a disastrous failure, or it may prove to be a magnificent success. If it can be successfully completed, it will be of immense benefit to the citizens of New York, increasing the value of property all along Broadway, solving the vexed problem of rapid transit and affording a handsome revenue for the city treasury.

There will necessarily be some slight interruption to business for a short period at different points on the street, and it is possible that in rare instances there may be injury to the walls of a few buildings, especially if such walls are weak or defective. The engineers are positive that there can be no material or serious injury to any substantial building which is already securely supported. It should be borne in mind that the railway only proposes to occupy forty-four feet of the street, which, for about three-quarters of its route, brings it within curb lines. It does not run under any buildings on Broadway, nor does it approach any such buildings within fourteen feet, which is the nearest approach along the whole line.

From the Battery to Fifty-ninth street is five miles, or 26,400 feet. For 19,517 feet the railway will be between curb lines. For 2,125 feet, one inch to twelve inches under walks. For 2,085 feet, one foot to two feet under walks. For 2,333 feet, two feet to three feet under walks.

For 150 feet, three feet to four feet under walks. For 200 feet, four feet to five feet under walks, at Rector street. At this last place, the railway will be within fourteen feet, the nearest approach to any building on the whole line.

Irrespective of the opinions of the engineers, it is difficult to believe that any serious danger will result to buildings by reason of an excavation which does not approach any building within fourteen feet at the nearest point.

The rights of private owners seem to be well protected by the provisions of the bill. Wherever any private vaults under sidewalks are disturbed or taken, and the alleged owners have any vested rights or interest in them, they cannot be disturbed or taken without adequate compensation being first made. The language of the bill is plain and explicit upon this point. It declares that "no private property, property rights or interests, corporeal or incorporeal, including property, property rights and interests of owners of lands abutting on streets, avenues or places occupied by such railway, shall be taken or invaded by such company *without due compensation,* but such company may acquire the same by agreement."

If the company should attempt to disturb such private property without having paid therefor, it can be restrained by injunction.

If by reason of the construction of the railway any injury shall result to adjoining property or to the city, the bill declares that the company shall be liable therefor. It is made liable for all damages, 'direct and indirect.' (Section 8.)

Before it shall proceed to disturb a single foot of Broadway, it must give a bond in the sum of not less than $2,000,000, with sufficient sureties, to be approved by the Mayor of New York, conditioned for the payment of all damages 'direct and indirect,' which either the city or any owner of property may sustain by reason of the construction of such railway.

Its liability is not, of course, limited by the amount of the bond. The bond is merely a security or a reserve fund. The company — its property, franchises, etc., are still liable to the extent of any further liability or damages which may be established.

If the company shall become insolvent, and thereby the rights of any injured parties may become jeopardized, it can be restrained from further operations. It is not to be assumed, however, that in any such event there would be any desire to proceed with an enterprise which had proved so disastrous as to have exhausted the amount of its $2,000,000 bond and to have bankrupted itself besides.

The bill provides that the company shall pay to the city annually three per cent. of its gross earnings.

This is believed to be a proper compensation to the city for the franchise which has been conferred upon the company. It is reasonable in amount, and the company can well afford to pay this compensation in case the enterprise is successful, as it bids fair to be. Those who assert that the project of a railway under Broadway is impracticable, and, at the best, only a doubtful ' experiment ' are estopped from insisting that a greater compensation should be demanded.

A franchise for such a railroad, involving, as it does, some risks and the expenditure of millions of money, is far different from the franchise of a simple surface railroad, requiring no risk and little outlay.

The exaction for the city of a portion of the earnings of the railroad is in accord with what is regarded as public sentiment upon this question.

As a guaranty of the good faith of the company the act prohibits the commencement of construction until the board of engineer commissioners shall certify that the financial situation of the company is such as to justify it, but even they are expressly forbidden to give such certificate unless the company shall first have in its treasury at least three millions of dollars applicable to the work.

It would seem as though the public interests are amply protected by this very proper provision. I am inclined to think that the engineer commissioners may also be trusted not to authorize the beginning of the work until the financial success of the undertaking is otherwise well assured. This is their duty in the premises, and if they fail to properly protect the public interests they can be summarily removed by the Governor, and engineers who will protect such interests can be appointed.

It has been urged that the city authorities are opposed to a railway under Broadway. The statement is incorrect. All of the members of the board of estimate and apportionment (consisting of the mayor, comptroller, president of the board of aldermen and president of the department of taxes and assessments) have signed a paper, which has been presented to me, wherein they expressly state that they 'do not wish to be understood as opposed to the project of an underground railway either upon Broadway or upon any of the axial lines of travel in the city of New York.' They raised certain objections to this measure as it originally passed, which have been cured to a great extent by subsequent amendments made when the bill was recalled from the Executive.

Among other amendments suggested by said local authorities (which were adopted) was one authorizing the Governor to appoint a new board of engineer commissioners to supervise the construction of the railway, if in his judgment he deemed it essential for the public interest.

They objected to the bill because 'no provision is made for a board newly constituted with special reference to the enlarged powers vested in them by the act under consideration. It, therefore, seems not only expedient *but highly imperative* that provision should be made by an amendment to the bill for the appointment of a new board by the Governor. The complexion of such a board would then be determined largely by the functions which they now have to perform under the measure proposed.'

The legislature accordingly adopted this recommendation, recalled the bill, and amended it in this particular. It is also because of such suggestion of the city authorities that I am inclined to approve this provision of the bill.

It seems unnecessary to specify the various other particulars in which the bill has been improved by amendments.

It may be defective in some of its details, but it is human legislation and perfection is not to be expected. If defects shall be disclosed as the construction of the road shall be progressed, I will take pleasure in urging their correction, and it may be reasonably assumed that the legislature will readily adopt any necessary amendments which may be suggested. It has been my endeavor to require that every just right of the city and of the property owners should be fully protected, and while the bill may not be free from criticism in all respects, it, nevertheless, seems reasonably satisfactory.

Another consideration, while not at all controlling, is not without weight. The immediate construction of this railway will give present and much needed employment to thousands of idle mechanics and workingmen.

If capitalists are willing to aid a great and desirable improvement of a *quasi* public nature and to invest their money in an enterprise, the construction of which will tend to relieve the condition of the workingmen by furnishing them an opportunity to secure support for themselves and their families during the present hard times, such an enterprise — all other things being equal — should be encouraged by public officials rather than embarrassed or hindered.

That there is strong opposition to this railroad on the part of many very respectable and wealthy gentlemen is not denied. It is believed, after a careful and thoughtful consideration of this whole subject on my part, that they are unnecessarily alarmed and that this contemplated improvement will benefit rather than injure their property. Some of them may be selfish in their opposition, but it is realized that the majority of them are sincere in their fears that the project will not be successful and their property will be seriously damaged, but it is believed that they are honestly mistaken or misled.

That there is opposition to this project is no matter of surprise. Every scheme for rapid transit in New York city has met with serious opposition, and it would be strange indeed if the present one should be an exception.

In the hope and belief that the fears of property owners may be entirely groundless, and that the construction of this railroad may give that relief to the traveling public which New York city so much needs, and impressed with the conviction that sooner or later there will be built an underground railroad under Broadway, and that now is a fitting time to undertake the great work, and that the present scheme is one reasonably free from serious objections, I have concluded that it is my duty to approve this bill. The importance of the measure renders it appropriate that my reasons should be set forth in this memorandum."

See Astor v. Arcade R. Co., (1889) 113 N. Y. 93.

May 13.

Memorandum filed with Senate bill, chap. 337, providing for an increased water supply for New York. Approved.

"An examination of this bill shows that its provisions have been generally misunderstood. It seems to have been confounded with other bills pending before the legislature. It does not increase the powers of the superintendent of public works. It does not confer any additional authority upon the aqueduct commission. It simply changes the *personnel* of the commission by dropping two of the officials or *ex officio* members, constituting the present commission, and substituting in their places three citizens, one of whom shall be a civil engineer, and one of whom shall reside in one of the counties, outside of New York, through which the aqueduct is proposed to be constructed.

The bill also reduces the annual salaries of all the commissioners from eight thousand dollars to five thousand dollars.

It passed the legislature nearly unanimously, and as there are no serious legal or constitutional questions involved, no sufficient reason for withholding my approval is apparent.

Being compelled to differ with the legislature so frequently upon matters of legislation, it is desirable to avoid all appearance of unreasonable or factious opposition to its measures whenever such a course can consistently be adopted.

It is represented that the people in the counties outside of New York, through which the aqueduct is being constructed, are desirous of having a representative upon the commission to especially protect their interests, and the legislature has endeavored to gratify their wishes. There seems to be some force to the claim of such localities, and it is anticipated that no possible harm can result from permitting such proposed representation.

It is further represented that neither the mayor nor the comptroller, by reason of their onerous official duties, have sufficient time to give due and proper attention to the work of the commission, and that the efficiency of that body will be greatly promoted by the substitution of citizens, who hold no other office whatever, and who can give their entire time, if necessary, to the faithful and energetic discharge of their duties as commissioners.

These are considerations which are certainly not without weight, and which must unquestionably have influenced the legislature in the passage of this act.

It is also understood that neither the mayor nor the comptroller were desirous of being continued as members of the commission. Neither they nor any of the local authorities of New York city have protested against the bill, and in the absence of any such action on their part it may be assumed that, personally and officially, they acquiesce in the propriety of its provisions.

It is claimed to be desirable that one of the proposed commissioners should be a civil engineer, and the bill so provides. No one of the present commissioners has ever had any practical experience in the construction of tunnels or aqueducts, and the aid and advice of a skilled and practical man as a member of the commission, without the commission being compelled to always rely upon the judgment of employes or outsiders upon engineering questions, would seem to be very advantageous. The recent scandal arising out of differences between the chief engineer and the construction engineer of the aqueduct would, it is believed, have been avoided by the presence in the commission itself of an experienced civil engineer.

Frequent changes in such a commission are of course to be regretted, and last year I refused to approve a bill which the legislature passed, adding another official — the head of the Fire Department of New York — to the commission, although strongly urged so to do by the local authorities of that city.

No such reasons then existed for a change as are now presented for this bill, and the experience of another year in the working of the commission having, it is claimed, furnished new arguments for the proposed change, and the legislature having in its wisdom deemed this measure advisable and passed the same with great unanimity, I do not feel impelled to again thwart the action of the legislature by antagonizing its deliberate judgment upon such a question. The value of any commission depends not so much upon the number of men or officials who compose it, as upon the capacity and honesty of its members.

The presence or absence of one, two, or a dozen officials of New York city, is not regarded as essential to the success of the aqueduct commission. Good citizens, who hold no other office, are as competent to properly discharge the duties of a commissioner as any busy city official can possibly be.

Everything depends upon the integrity, ability and industry of the persons selected.

The financial affairs of the commission are subject to a great extent to the supervisory action of the mayor and comptroller, who alone can issue the necessary bonds and give the requisite checks for payments to the various contractors, and such supervisory power will still exist whether those officials are members of the commission or not, and is not affected or disturbed by this bill.

The bill is not in all respects what I would have recommended or preferred, but as the legislature seems desirous of making a change, and as immediate action upon the measure is demanded in order that the new commissioners may be selected and confirmed by the senate, I have, with some reluctance, concluded to formally approve the bill.''

THIRTY-DAY BILLS.

June 15.

Veto of Senate bill entitled "An act relating to the appointment of Commissioners of Excise in the city of New York."

'' This act provides that the president of the board of aldermen of the city of New York shall appoint a board of excise for that city to serve until the spring of 1887, and that the terms of office of the present commissioners shall terminate in ten days after the approval of this act. It further provides that in April, 1887, and every three years thereafter, the mayor of said city shall appoint its excise commissioners, without confirmation by the board of aldermen. The theory of the bill seems to be that under existing law the mayor cannot appoint excise commissioners without confirmation by the board of aldermen, but that he, having recently assumed so to do, and his appointees having commenced to act, and the old commissioners of excise not recognizing the validity of such appointment, and having refused to surrender their offices, are also assuming to act, there exists a ' muddle ' in excise matters which is proposed to be settled by the provisions of this bill.

It is clear that the legislature ought not to interfere to settle legal disputes between conflicting claimants to public office unless there is an absolute and pressing necessity for it. Legal disputes should be left to be settled by the courts, except in rare cases where great public interests are involved, and where serious and doubtful questions have arisen which cannot be speedily settled by judicial decision. Otherwise a bad precedent is created which would naturally invite appeals to the legislature whenever the validity of an appointment to office should be questioned, even though it be upon the most slight or trivial grounds. The question is here presented whether there is any serious legal difficulty to be settled which requires the intervention of the legislature. I do not believe there is. I am clearly of the opinion that under the provisions of chapter 43 of the Laws of 1884, the mayor had the right to appoint excise commissioners without confirmation. It is believed that such was the intention of that act, and that the courts will so construe it, notwithstanding its defective or apparently restrictive title. The body of the act is plain and decisive. It declares that '*all* appointments ' which had theretofore been required to be made by the mayor and confirmed by the board of aldermen ' in the city of New York,' should thereafter be made by the mayor without such confirmation. Excise commissioners had theretofore been appointed 'in the city of New York' by the mayor and confirmed by the board of aldermen, and the act clearly applied to such offices. It matters not whether such offices were created by the charter of New York city or by a special law, or by a general act of the legislature, or whether they are to be regarded technically as State or city offices. They were offices to be filled 'in the city of New York,' upon the nomination by the mayor and confirmation by the aldermen, and that is sufficient to bring them within the provisions of that act. The intention of the act cannot be ignored, nor should it be controlled or limited by a title which, possibly, may not with strict or complete accuracy express the entire purpose of the bill. The body of the act should control the construction which should be given to the measure. The circumstances under which the act was enacted may be taken into consideration, as well as the grounds which existed or were alleged to exist for depriving the board of aldermen of all confirming power. There was no reason why the aldermen should have been deprived of a portion of their confirming power and not all of it, or why the office of excise commissioner should have been excepted from a law applicable to all other appointments.

If this view of the law of 1884 is correct, of which I have never entertained any doubt, it follows that Mayor Grace had the right to appoint an excise board at the time he did, and that it did not require confirmation.

That board should not be displaced merely because the old board chooses to dispute this view, and because the old commissioners insist upon acting after their terms have expired.

Neither does the situation justify the legislature in interfering by providing for the temporary appointment of a new board by the president of the board of aldermen. A controversy should not be assumed to be serious, nor should one be created where none really exists, simply for the purpose of affording a pretext for legislative interference, and to displace regularly appointed officials whose places are desired by other people. If my construction of the law of 1884 is the correct one, there are no important legal difficulties to be overcome in this matter, and the appointees of the present mayor are the legal officials, and entitled to serve out their full terms, and they should not be deprived of their offices by the arbitrary and unprecedented action of the legislature upon the false pretense of the existence of a grave legal complication which imperils public interests, and which, in fact, has little foundation upon which to stand. It was, of course, unfortunate that the mayor should have himself cast a doubt upon his right to make these appointments alone, by first submitting the names of his appointees to the board of aldermen for confirmation. His ill-advised or hasty action, however, could not change the law, and it having been quickly reversed, it becomes now of little importance. The public are not estopped by reason of his action from insisting that the law of 1884 should be construed and enforced according to its true spirit.

There does not seem to be any excuse whatever for the enactment of the present measure. No valid reason exists why the mayor of New York should not be permitted to appoint excise commissioners. The bill seems to be a temporary expedient, cunningly devised to deprive the present mayor of his prerogative to make such appointments. The bill itself recognizes, to a certain extent, the propriety of such power being lodged in the chief executive officer of the city, by providing that he shall fill all vacancies which may occur in the very board authorized to be appointed by the president of the board of aldermen, and that future mayors shall make all future appointments.

The bill is simply a scheme devised by the legislature to decapitate certain officials, in order temporarily to make room for others. I cannot become a party to any such questionable proceeding. The bill is without merit, and would furnish a bad precedent, which would surely return to plague those who are now clamoring for its approval.

What New York city needs in this matter, as well as in most other matters to be affected by legislation, is — to be let alone. Special legislation in reference to its affairs should be avoided whenever possible. Bad precedents should not be created, even if good results might temporarily follow. Its mayor should be permitted to exercise the proper functions of his office, and temporary expedients should not be resorted to in order to cripple or curtail his just powers. Mayors of cities should be permitted to appoint all excise commissioners. They were permitted to do so under the original general excise act of 1870 in every city in the State, except the cities of New York and Brooklyn. There was never any reason why those cities should have been made an exception to the general rule.

It is no reflection upon the present president of the board of aldermen when it is asserted that he ought not to exercise the powers proposed to be conferred by this bill. That he would appoint excellent officials I have no doubt. He is a business man of intelligence and character, and possesses the confidence of the people of the city of New York, and would discharge the trust confided to him with honor and fidelity. But he was not elected for any such purpose, and such appointments belong of right and propriety to the mayor.

The act in question is mischievous in its tendencies and should never have been passed. No matter who occupies the mayor's chair — or to whatever party or faction he may belong — the rights and prerogatives of his office should be protected from encroachment by legislative interference. It follows from what has been previously stated that the terms of the old excise commissioners expired on the appointment by the mayor of their successors, and it is believed that, as good citizens, they should have quietly acquiesced and surrendered their offices. It is believed and hoped that they will do so now.

Aside from these considerations, there is no necessity for the bill. The new board is recognized as the legal board by all the city authorities, including the police force, and is proceeding in the quiet and orderly discharge of its duties. The old board has no authority in fact, and its orders and licenses are not respected anywhere, and it maintains the mere semblance or shadow of opposition to the new board. If it shall still insist upon maintaining its existence, its legality can be quickly settled by a *quo warranto* proceeding by the attorney-general.

The public interests do not require the enactment of this unwarranted legislation, and I cannot consistently approve it.''

June 15.

Veto of Senate bill entitled "An act relating to the election, the terms of office and the powers of the mayor, aldermen, comptroller and president of the board of aldermen in the city of New York."

'' This bill illustrates conspicuously the method by which a meritorious measure can be weighed down by additions contrary in character and repugnant, even if not actually hostile to its spirit, as originally advanced. There are contained within it three distinct propositions, each of which alone would make a radical change in the system at present prevailing for the selection of important municipal officers for New York city. These three propositions are as follows:

The first provides for spring municipal elections.

The second provides for the election of aldermen upon a general ticket; and

The third provides for the use of what is known as the cumulative method of voting.

These are unrelated propositions, each of which might very properly be submitted to the Executive for approval upon its own merits, but there exist no good reasons why all three should be included in one bill, thus endangering, if serious objections exist to any one, the fate of the other two. Each proposition, in all its ramifications, is so important that it deserves individual consideration and discussion.

I proceed to consider the first proposed change, that which provides for spring municipal elections. Upon this question I have on various occasions expressed my opinion without hesitation or uncertainty. My annual message, transmitted to the legislature January 6, 1885, advocated this reform, for the reasons, among others, that it would relieve the choice of local officers from the influence of strictly partisan politics; that it would leave the election of State or national officers free from the embarrassment of local contests and that it would do away largely with the opportunity for what is known as 'trading.' At that time I stated:* 'Common experience has testified to the evil of this system (*i. e.,* the concurrence of municipal and general elections), and the principal, if not the only argument for its retention, has been that it avoids expense and loss of public interest incident upon a great frequency of elections.' To meet these objections I then proposed, somewhat in detail, a plan by which it was believed they might largely be removed.

Upon the suggestion thus made no action was taken by the legislature of 1885, a body of like political faith with that which has just adjourned.

In my message of January 5, 1886, I again reiterated my suggestions, as follows:

'It is believed that the separation of municipal from State elections, thereby relieving the choice of local officers from the influence of strictly partisan politics, and insuring the selection of State or National officers free from the embarrassment of local contests, would be a step in the right direction. Prior to the year 1870 the municipal officers in the city of New York had been chosen, not at the general election, but at what was known as the charter election, held for many years in the spring, but more recently in the month of December in each year. In 1870 the law was changed, by providing that the municipal officers should be voted for on the same day of the general election in November, and it has so remained ever since. Public sentiment, both in the city and in the country, recognizing the growing evils of the present system, has strengthened in support of the proposition favoring a return to the ancient system of spring elections for charter officers.'

**Ante,* p. 17.

Upon the suggestion thus renewed no effective action was taken by the legislature of 1886 until the closing days of the session. Then the bill now under consideration was passed and sent to the Executive only after the legislature had adjourned, and, therefore, too late to permit of any modifications or amendments which might clearly appear to be necessary. It is to be borne well in mind that this bill, of such admitted importance to New York city, received no thoughtful consideration at the hands of the legislature, and was considered at all only during the hurried and confusing last days of a session which had already covered nearly five months. Yet, notwithstanding certain ambiguities of expression and doubt as to the terms of some of the officers affected, if the proposition for spring elections stood alone I would assuredly approve it.

But the bill goes further. The second proposition incorporated therein is the change proposed in the election of aldermen. By this change all local representation from the various wards is done away with and, instead, the board of aldermen, reduced in number to fourteen, is to be elected from the city at large upon a general ticket, seven members being chosen each second year.

A brief review of the legislation of the last few years upon this subject is not inappropriate. If it does no more it will demonstrate clearly the fickleness of public opinion in New York city and the variableness of effort among those who have been most ready to urge alleged reforms.

Prior to 1882 minority representation existed restrictedly in the city of New York, the board of aldermen being chosen pursuant to section 4 of chapter 335 of the Laws of 1873, as amended by section 1 of chapter 400 of the Laws 1878.* Under these laws the board was constituted at first of twenty-one, and after 1878 of twenty-two members, of whom fifteen were chosen by threes in the five senatorial districts of the city and six were chosen by the entire city. But no voter could vote for more than four of the six aldermen-at-large, and in the districts no voter could vote for more than two aldermen of the three to be chosen. After 1878 one alderman was chosen by the annexed district.

Upon February 14, 1882, Mr. Theodore Roosevelt introduced a bill which abolished the method of election then prevailing, with its accompanying provisions for minority representation, and substituted for it the present method of electing twenty-four aldermen from as many separate districts, one to be chosen by the electors of each district. This proposition was hailed by the great majority of the press and public as a reform measure, and thus supported it passed both houses of the legislature, without a single opposing vote in either house, was signed by Governor Cornell, and became a law upon July 1, 1882. In 1883 no change was made.

In 1884, upon March 14th, Mr. Roosevelt introduced a second bill entitled 'An Act relating to the board of aldermen in the city of New York.' This bill was one of a series of the reform measures which were the fruit of the investigation of the assembly committee on cities of that year.

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* The constitutionality of the act of 1878, chap. 400, was considered in People ex rel. Angerstein v. Kenny (1884), 96 N. Y. 294, but without result, because the terms of office had expired when the decision was rendered.

It provided for the annual election of an additional alderman, who should be known as the president of the board, and who should be the choice of the electors of the entire city. It passed both houses almost unanimously, receiving but ten adverse votes in the assembly and but one in the senate, was approved by Governor Cleveland and became a law upon March 29, 1884, being chapter seventy-four of the laws of that year. Under these two reform measures — the Roosevelt laws of 1882 and 1884 — minority representation, as it had previously existed, was abolished, and under them there have since been elected the boards of aldermen of 1884, 1885 and 1886.

Now, in the stead of this so lately established system, it is proposed to substitute another, namely, that of electing all aldermen upon a general ticket. The board is reduced in number to fourteen, and when the system is in regular operation the term is to be four years, with one-half of the members to be elected every second year. It may well be questioned whether all the interests of New York can thus secure adequate representation. New York is a great city, whose interests are varied and numerous. The more representative its aldermanic body can be made, within reasonable limits, the less liability there will be for corruption or undue influence upon the action of such a body. I am of the belief that a more numerous board than that proposed is desirable and will tend to secure more satisfactory city government.

Yet notwithstanding the diversity of opinion which has existed and does exist as to the wisdom of this new plan of constituting the board of aldermen and selecting its members, I still might feel inclined, the legislature not being in session, to approve the bill before me were the two propositions so far enumerated all it contained.

But there is a third proposed change, more radical than either of these two. It is a change which has been little agitated in the press, still less discussed in the legislature, and least of all considered as to the actual effect it might have upon the government of the municipality that is affected, or as to the practicability of its actual operation in a city of the magnitude of population and diversity of interest of New York. This third proposed change is known as the cumulative method of voting. By it each voter is allowed as many votes as there are aldermen to be elected, and he is also allowed to cast all of these votes for any one candidate, or may distribute them among the candidates in such proportion as he chooses. In the instance before us, each voter would have at first fourteen votes for aldermen, one of which could be cast for each of fourteen candidates, or the whole fourteen of which could be cast for a selected one of the candidates, or any combination of votes and candidates could be made so long as the total votes cast did not exceed fourteen. In April, 1888, and each second year thereafter, but seven aldermen would be elected, and the voter would accordingly have seven votes to cast in like manner as above shown. Under this plan any but an extremely small minority could by proper management elect at least one representative. And this is the chief advantage claimed for this complicated system.

Properly speaking there is no one homogeneous minority in New York city. But there are numerous diversified minorities. The advocates of this system are inevitably and mathematically led to the conclusion following: Each one of the fourteen more powerful minorities would secure a representative in the board of aldermen. Minorities made up upon the basis of race, of religion, of occupation, of wealth, or of poverty, would secure representation. Broken into classes of every sort and description, the electors of New York city would choose not men responsible to the city at large and so desiring to serve impartially all interests, but men dependent for favor upon and endeavoring to satisfy the particular minority of electors by whose votes they were placed in office. It would be the rule of the machine indeed and not of one or two or three machines, but of the fourteen selfish combinations which race, religion or occupation, would bring effectively to the surface. In brief, this bill proposes that an enormous, unwholesomely compacted, politically perplexing and historically misgoverned community is to be committed to the trial of a device which has been, even with a limited measure of success, heretofore applied only to small, simply organized constituencies. The elector's choice of where he will bestow his cumulative privilege is to be exercised upon two, or more likely upon three or more tickets, each containing either seven or fourteen names. It is not believed that an appreciable number of the voters of New York city will make this choice for themselves.

More than 700 polling places must be manned. If individuals, or if any hastily organized body of individual citizens attempt to exercise such a choice as this bill seems to give them, they would accomplish little. Possibly they could elect one, two or three aldermen. They can do so now. But it must be clear to any observer of politics that the choice herein apparently provided for is a delusion; that it will be made, not by the individual voter — or, if so made, will be fruitless — but will be made for him by the caucus, the committee, in short, by the dreaded machine which such enactments as this are professedly devised to overthrow. Such a scheme as this bill contains would tie the independent voter hand and foot. He must act with a large number of others or he can accomplish nothing. In order to so act he must be one of an organization; that organization's existence is at once known to the professional politicians, and these latter measure its strength. If they fear it, they sink their ordinary animosities and contentions in recognition of the necessity of facing a common foe.

Thus the individual's importance is absolutely obliterated and no exercise of choice can be effective, unless directed by organized effort, which effort in its turn will be most effective when employed in directing a body of loyal and unthinking followers, which means that the best machine, and the most obedient and thorough-going partisans would profit most by this feature of the bill.

What is needed in municipal elections is simplicity and effectiveness. A great city's chief magistrate should be chosen by the vote of all its electors. Upon him should be concentrated both power and responsibility, so that the citizen may at once determine many questions when he votes for a mayor. The choice between two or three candidates for such an office can be intelligently made by every one. It is in this direction that the way to reforms in municipal administrations has been and will be found.

The advocates of this plan concede that it is an experiment, pure and simple. It has not been tried in a single municipality in the United States. In 1872 the reform legislature of that year passed a charter for New York city, the distinguishing feature of which was the plan of cumulative voting. This enactment was vetoed by the Governor* and that veto was sustained by three-fourths of the whole legislature, including the Speaker of the Assembly of 1886, then also a member of the legislature, by whose manipulations this year the passage of this crude and heretofore repudiated scheme was largely secured. It is difficult to resist the conclusion that the promoters of this addition intended to imperil a good measure by injecting into it a provision which they knew the present Executive could not consistently approve.

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* *Ante*, vol. 6, p. 453.

It may further be remarked that Samuel J. Tilden, whose conspicuous efforts to reform the government of the city of New York are well known and appreciated, was a member of the legislature of 1872, and that he was also found among those who approved the veto of this experimental cumulative plan of voting.

For fourteen years, from 1872 to 1886, the scheme has slumbered, and no recommendation for its adoption has been made by any governor or by any political party. Prior to its resurrection, late in the session of 1886, it had not been demanded by any public meeting of citizens of New York. It had not been formally asked for by any reform association of that city. Not a single public man of any prominence had urged its adoption. Not a single newspaper in New York had suggested its incorporation in the measure for spring elections.

The only place in this country where the system is in operation appears to be the State of Illinois. It is there applied solely to districts electing *three* local judges or *three* representatives, districts much smaller in population than the city of New York, whose inhabitants are equal to at least two-fifths of the whole State of Illinois. Even in that State it is not applied to the election of municipal officers.

It is evident that there was no sincere desire upon the part of the majority of the last legislature to give New York the benefit of spring elections. That majority could have done it in 1885. They could have done it this year had they so desired. They resisted to the last moment, and only passed the bill when this doubtful provision was foisted upon it.

More attention to the duties of the primary elections is one of the real needs of New York. When this attention is given, one honest vote for one honest candidate is all that any honest citizen of New York should desire. A complicated plan, the effect of which is to legalize the voting for a candidate more than once, will not bring the reform in municipal affairs that New York city so greatly needs.

I do not rest my decision mainly upon any grounds of unconstitutionality. It must be conceded, however, that there are grave doubts whether this system of voting is permitted by our constitution. The 'elections' referred to in our constitution at the time of its adoption were not understood to be of the character contemplated by this measure. It is understood that the constitution of Illinois was similar to our own in this respect, and the system of cumulative voting was only authorized by law after her constitution had been changed.

The question of holding a constitutional convention in this State is to be submitted to the electors at the ensuing fall election. If the discussion of this subject shall render the adoption of this experiment expedient, it can be accomplished through the instrumentality of a constitutional amendment, proposed by a constitutional convention. This is the safest and easiest course, and would relieve the situation from all serious legal complications.

It is certainly to be regretted that this scheme for spring elections, and possibly also to be regretted that the plan for the election of aldermen-at-large, is to be defeated by this addition of the cumulative method of voting. This bill, however, would not go into effect until April, 1887. It is my intention to renew, in January next, my recommendation for the passage of a simple and uncomplicated act to secure to the citizens of New York spring elections, and the legislature of 1887 can, if it is so disposed, make my recommendation effectual by the prompt passage of such a measure, which can go into practical effect at the same date as is proposed by the bill before me. The same senate which has passed this bill will act upon my recommendation next year. It is to be hoped that an assembly will be chosen which will not distort a good measure by weighing it down by adding objectionable even if not unconstitutional provisions.

The principal object of this system, as announced by its advocates, is to secure minority representation. The minority party in New York city — the word minority having reference to one of the principal political parties into which our people are divided — had ample representation under the system established in 1873 and continued until 1882, when it was abolished with so much unanimity under the lead of Mr. Roosevelt. Besides, if that is the object, it is secured under the twenty-four district system now in operation. Minority representation alone and of itself will not reform the government of New York. The minority of the board of aldermen of 1884 were not less corrupt than the majority. Under such circumstances minority representation is not so desirable that it is necessary to overturn one great theory of our government, as it has prevailed in the past, and enter upon a doubtful and almost untried experiment. It is evident that there are some members of the minority of the city of New York who desire not only to do all the thinking, but are willing and anxious to do a much larger proportion of the voting than falls to their share. The majority of the people must rule in New York city the same as in other parts of the State. A minority in New York city should have no greater rights than a minority in St. Lawrence county. There are counties in the State where the minority has not a single representative in the boards of supervisors, which boards are the local legislatures of the counties. The minority in the rural districts is content to let the majority rule. The rural representatives of that majority in the legislature must not attempt to fasten on the city of New York a scheme which they would repudiate for their own communities.

This is loudly proclaimed as a reform measure. So was the Roosevelt amendment of 1882, which established the aldermanic district system at present in operation. All change is not reform. Unless a change is based upon some sound principle and is capable of practical good results, it ought not to be entered upon. The proposed scheme of cumulative voting is undemocratic in theory, has never been approved by practical experience in municipal affairs, is not demanded by public sentiment, and would be disappointing in its results to the minority as well as to the majority of those affected by it, and possibly work great injury to the interests of the whole city of New York. Under such circumstances, however meritorious the bill may be in other respects, I cannot give it my approval."

June 15.

Memorandum filed with Assembly bill, chap. 667, annexing Lloyd's Neck to Suffolk county. Approved.[22]

"This bill sets off a portion of Queens county and annexes the same to the county of Suffolk. It, therefore, changes the boundaries of two assembly districts. The question arises whether this can be legally done at this time under the provisions of section 5 of article III of the Constitution, the bill not having been passed by the legislature 'at its first session after the return of the (State decennial) enumeration.' I have considerable doubt upon the question.

It clearly could not have been done prior to the amendment to the Constitution of 1874, and there is some question whether that amendment has obviated the objection.

The bill does not propose to erect any new town or any new county, but it divides a town and divides a county and changes two assembly districts. The power of the legislature to change the boundaries of an assembly district at any time where a new town is created or where a new county is erected, is conceded, but it may well be doubted whether it can divide a town or divide a county, *at any time,* without the erection, *at the same time,* of a new town or a new county.

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[22] As to the alteration of Assembly districts, see Kinne v. Syracuse (1866). 3 Keyes, 110; Lanning v. Carpenter (1859), 20 N. Y. 447; People ex rel. Henderson v. Westchester County, 147 N. Y. 1.

If I was clearly satisfied of the unconstitutionality of the measure I could not approve it. Not being so satisfied I must give the bill the benefit of the doubt and therefore approve it.

Aside from this question, there is no objection to the bill on its merits. The propriety and justice of the change is too clear for argument."

June 15.

Memorandum filed with Senate bill, chap. 666, to encourage the growth of free libraries. Approved.

"This bill is opposed by the mayor and the other members of the board of estimate and apportionment of New York city, principally upon the ground that its provisions are believed to be mandatory. I am compelled to differ with them as to the legal effect of the bill. I regard its provisions as discretionary, and believe that they will be construed so that it is left to the sound judgment of the board of estimate and apportionment as to the amount of moneys which that board may see fit to allow to the libraries in question.

If I believed that its provisions were mandatory, leaving no discretion whatever in the board, I should pursue my usual course in such matters and not approve it.

Notwithstanding the peculiar wording of the fifth section, I am inclined to believe that the bill, as a whole, confers an authority but leaves its exercise wholly discretionary, and I am quite certain the courts will so construe it if occasion shall ever arise.

In other respects the bill is a very just and meritorious one, and I have concluded that it would be doing great injustice to a growing and worthy charity if I should not approve it."

June 24. The omnibus veto included the following bills:

A. 493. Saratoga Springs, to provide for erection of State armory in village of.

A. 516. Public instruction, to amend act for the revision and consolidation of general acts relating to time spent by teachers at teachers' institutes.

S. 277. Buffalo, amending act empowering judges of Superior Court to employ stenographers. (Duplicate of chap. 343, Laws of 1886.)

S. 494. Legal holidays, amending act in relation to.

A. 790. Board of Claims, giving jurisdiction to hear, audit and determine claim of James M. Dudley.

A. 615. Brooklyn, to prevent construction of elevated railroad on certain streets in.

A. 477. Railroad corporations, in relation to rates of fare to be charged on mountain railroads.

A. 432. Public Instruction, amending act to revise and consolidate general acts relating to, in relation to apportionment of school moneys.

A. 211. Literature Fund, to increase the.

S. 446. Krenkel, Martha, as administratrix of Kasmire Krenkel, for the relief of.

A. 321. Nassau Trust Company, to incorporate the.

A. 590. Wells, James N., Jr., to legalize and confirm official acts of, as notary public.

A. I. 1309. Clinton Prison, appropriation for completion of wall at.

A. 678. Intoxicating liquors, prohibiting sale of in any building or upon any premises belonging to the State.

A. 851. Revised Statutes, amending, relative to county treasurers.

A. 782. State armories, to provide for maintenance of and limit expenses thereof chargeable to the State.

A. 783. Oswego river, relative to improving.

S. 354. Grocers' Trust Company of New York city, to incorporate.

S. 104. New York city, relative to certain actions against the mayor, aldermen and commonalty of.

S. 472. Kings county poor and insane, authorizing county to issue bonds to purchase farm and erect buildings for keeping of, etc., amending act.

A. 907. Civil Procedure, Code of, amending section 829, relating to testimony in action against deceased party.

A. 227. Civil Procedure, Code of, to amend, relating to coroner when acting as sheriff.

A. 812. Westchester, Westchester county, authorizing issue of bonds by town of, for highway purposes.

A. 934. Saratoga Springs, charter amending, relating to clerk of board of fire commissioners.

A. 531. Criminal Procedure, Code of, amending certain sections relating to duties of coroners.

A. 600. Buffalo city, charter amending, relating to school taxes.

A. 512. New York city, consolidation act, amending, relating to public market.

A. 498. Saratoga Springs, grade of Congress street, amending act relating to.

A. 849. New York city, Merchants' Trust Company of, incorporating.

A. 814. Board of Claims, to hear, audit and determine claim of Hudson C. Tanner.

S. 198. Hamlin, Jacob J., of Utica, for the relief of.

A. 120. Code of evidence, to establish a.

A. 103. Saratoga Springs, establishing a police department.

A. 822. Black River improvement, bridge over, in Lewis county.

A. 739. Ox creek, Oswego county, for the improvement of.

A. 796. Buffalo, Real Estate and Brokers' Board of the city of, incorporating.

A. 856. New York city, relating to jurisdiction of Department of Public Parks over certain streets and avenues in.

A. 948. Brooklyn Elevated Railway Company, to annul agreement between railroad commissioners and.

A. 681. Public instruction, amending act to revise and consolidate general acts relating to. (Amends several sections.)

A. I. 1317. Saugerties, harbor and creek, improvement of.

A. 434. Niagara county armory, appropriation for.

S. 168. Civil Procedure, Code of, amending section 923, relative to protested notes, etc.

S. 512. Penal Code, amending sections 317 and 318, relative to obscene literature.

S. 311. Town and county co-operative insurance companies, amending act relating to, classification of risks, etc.

S. 316. Buffalo, bridge over canal at Hudson street in city of.

S. 442. Railroad corporations, in relation to the operation of mountain railroads.

S. 408. Civil Procedure, Code of, amending section 3,221, in relation to judgments obtained by females against males for wages.

S. 410. Corporations, to require all to make annual report to comptroller.

S. 293. New York city, charter amending, relating to docks.

S. 456. New York city, Manhattan Loan and Trust Company of, charter amending.

S. 223. Collateral inheritances, amending act relating to taxation of.

S. 163. Brooklyn, providing school for education and discipline of truant, idle and vagrant children.

S. 366. Session laws, directing Secretary of State to prepare and publish chronological table of.

A. 566. New York city, relative to assessments for local improvements in.

A. 646. Civil Procedure, Code of, amending section 66, relative to lien of attorney for his costs and charges.

A. 553. Rome, providing for building of sidewalks on bridge over canal on George street in.

A. 237. Brutus, Cayuga county, providing for culvert under approach to canal bridge, in town of.

A. 955. Mohawk armory, appropriation for.

A. 946. Kings county, authorizing supervisors of, to reimburse John Cunningham for expenses incurred by him in action brought against him while commissioner of charities.

A. 697. Brooklyn, providing for police station in fourteenth precinct.

A. 665. New York city, relative to High Bridge Park.

A. 334. Point Chautauqua, to further extend, increase and define the powers of.

A. 861. New York city, charter amending, exempting the Wcst Side German Dispensary from local taxation and also relative to licenses.

A. 572. New York city, providing for payment of salary of John A. Stemmler as justice of the district court of.

1887. JANUARY 4. LEGISLATURE, ONE HUNDRED AND TENTH SESSION.

DAVID B. HILL, Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 4, 1887.

TO THE LEGISLATURE.— The Constitution of our State requires that the Governor " shall communicate by message to the Legislature at every session the condition of the State, and recommend such matters to them as he shall judge expedient."

This duty I proceed to discharge this year in the briefest manner possible, having, in previous annual messages, very fully, and at considerable length, expressed my views upon the various questions affecting the State. I may, however, take occasion during the session to communicate with you by special message more frequently than has heretofore been the custom, upon such matters as may arise from time to time, or upon subjects in relation to which some suggestions may hereafter be deemed especially desirable and expedient.

RENEWAL OF PREVIOUS RECOMMENDATIONS.

Before referring particularly to the condition of the State, or making any new suggestions, I may be permitted to call your attention to those made by me in previous annual messages, upon which no final legislation has yet been perfected. Some of these were embodied in bills which passed one house but failed in the other; others have been largely discussed, but no effective action taken thereon, while a few have not been considered at all.

It is not deemed inappropriate at this time to respectfully renew such recommendations (some sixteen in number), and invoke for them again your careful consideration. They are as follows:

First. A permanent system for the employment of prison labor.[1]

This recommendation is not, however, intended to include or favor the reinstatement of the contract system, or any other plan that is equivalent to it. The Legislature of 1883 permitted the people to vote upon the question of the abolition of the contract system, and they having, by a large majority, expressed themselves as opposed to its continuance, it becomes our duty to respect their verdict. Some other system must be devised which should be substantially free from the objections which were urged to the contract system. My views as to the general features which should characterize whatever plan may be proposed are so well known, and have been so frequently expressed to the Legislature, that any further suggestions upon this subject at this time seem unnecessary.

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[1] See L. 1888, chapter 586, providing for the employment of convicts in State prisons.

Second. A measure providing for spring municipal elections in the city of New York.

Such measure should be simple and distinctive, and should not be complicated with any other schemes. It should be essentially a spring election law, and nothing more. It should provide for municipal elections once in two years, rather than annually, thereby avoiding the expense and the loss of public interest incident upon too frequent elections; it should not interfere with the terms of office of present incumbents; it should fix a date for such elections that will accommodate the great majority of the people, and facilitate rather than retard their free exercise of the elective franchise.

Third. An amendment to the election laws of the State so as to permit naturalized citizens to be registered without the production of their naturalization papers, in case of the loss or destruction of such papers, and making their oath or affidavit conclusive evidence of citizenship for the purposes of registration. The necessity for this amendment was fully explained in my annual message of 1885, to which the Legislature is respectfully referred.* The propriety of placing naturalized citizens upon an equality with the native born, in the matter of affording equal facilities for honest registration and honest voting, cannot seriously be questioned by unprejudiced men. It is submitted that justice in this respect should not longer be delayed.

Fourth. A general law for the incorporation of trust companies.[2]

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[2] Chapter 546, approved June 8, 1887, provided for the organization of trust companies, for their supervision, and for the administration of their affairs.

* *Ante*, p. 20.

Last year five special acts were passed for the incorporation of as many different trust companies, from which I felt compelled to withhold my approval. Each conferred different powers, and imposed different restrictions, and established a different liability for the respective companies, and such acts constituted special legislation of the most objectionable character. Such companies should be organized under general laws, which should authorize the assumption of uniform powers and liabilities by each company, and it should be provided that the administration of the affairs of all trust companies should be subjected alike to the supervision, regulation and inspection of the Superintendent of the Banking Department.

The system of general legislation contemplated by the Constitution[a] will never be perfected so long as the Legislature each year favorably listens to the desire and claims of interested parties for special acts.

Fifth. An amendment to the General Assignment Act, for the purpose of preventing unjust favoritism, unfair discriminations, and an inequitable distribution of the debtor's property.[3]

These evils can be cured in a measure at least, by limiting the preferences which a debtor has the right to make, to a certain portion of the assigned estate, or forbidding them altogether except in the single instance of wages of employees. The preferences (other than the exception mentioned) which are now by the policy of the law allowed to be made, are a fruitful source of litigation, and the occasion of much injustice. The power being subject to great abuse, it should either be properly restricted or entirely abrogated.

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[a] Const. 1846, art. 8, § 1.

[3] This suggestion was embodied in chapter 503, approved June 2, which added a section (30) to the assignment law of 1877, as amended, providing that preferences other than for wages or salaries of employes, be restricted to one-third of the assigned estate remaining after deducting such wages or salaries, and the expenses of administering the trust.

Sixth. An act providing for the selection of a special counsel for the Legislature, whose duties shall be to prepare in legal form all bills to be introduced by any member; to give advice to members and to the various committees in reference to proposed legislation; to inspect the bills before their final passage in order to detect errors, imperfections and mistakes; to suggest and frame the necessary amendments, and generally to act as the legal adviser of the Legislature as to matters of form.[a]

Much valuable legislation is lost every year by reason of defective bills, hastily drawn and crudely prepared, and which might have been saved with the aid and assistance of such counsel.

Seventh. A revision of the tax laws of the State, whereby real and personal property shall be placed upon an equal footing for all purposes of taxation.

This subject was elaborately presented in the last annual message, and the arguments there urged need not be repeated here. The duty of the Legislature in the premises seems plain and unmistakable.

Eighth. A measure providing for a plain enumeration of the inhabitants of the State.[4]

This is clearly demanded by the Constitution.[b] It cannot be refused without a violation of the Constitution. The provisions of that instrument requiring a simple enumeration of the inhabitants every ten years, upon which to base an apportionment, are as obligatory and as essential of fulfillment as are those which direct that a Constitutional Convention be now held. One requirement can be refused as well as the other. The fulfillment of both is alike demanded by every consideration of honor and good faith.

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[a] See 1885, *ante*, p. 26.

[4] As to an enumeration, see 1885, note 18, *ante*, p. 43.

[b] Const. 1846, art. 3, § 4.

The Constitution does not exact a census. An enumeration, and that alone, is all that it directs. The word "census" cannot be found in the Constitution. The failure of previous Legislatures to direct a plain enumeration — and nothing else — cannot be justified. It admits of no apology or excuse. The constitutional duty is not performed by exacting something which the people do not want, to-wit: a census or collection of elaborate statistics of no practical value — and which the Constitution does not require — and incorporating and confusing it with an enumeration measure, and refusing to pass anything else.

What the people desire and have the right to demand is a simple enumeration, which will only cost them the sum of $80,000 or thereabouts, rather than an elaborate and complicated census which it has been demonstrated would cost them the sum of over $400,000.

The question is a simple one, and it cannot be made clearer by reiteration.

This constitutional duty neglected or refused in 1885 can be performed now. This is common sense — it is in accordance with precedents, and the principle involved has been adjudicated by the courts. No good reason exists why the present Legislature should not perform its plain and bounden duty in this regard. No party can long retain power which refuses a fair enumeration of the people, solely in order to prevent an honest reapportionment of the State. Political control may be retained by such methods for a time, but sooner or later the wrong will be righted. If this Legislature does not assume the honor and credit of doing it, some other Legislature, in the near future, surely will.

Ninth. The creation of a commission to revise the charter of the city of New York.[5]

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[5] In 1890, by chapter 311, a movement was initiated for the consolidation of the city of New York with other adjoining municipalities, and a commission was created to examine and report to the Legislature concerning the

This is recommended as preferable to a renewal of the attempts which are annually made to secure needed amendments by piece-meal. Instead of such usually futile efforts at reform, there should be a systematic endeavor to perfect a new and revised charter, carefully prepared and well considered, which shall absolutely guarantee to that city complete local self-government.

The administration of the city government should be divorced as much as possible from the State government. There should be essentially home rule in reference to strictly local affairs.

The necessity for a revision of the city charter, in order to accomplish such desired results, is conceded. The mayor should be vested with more extensive powers; the various departments should be mainly single-headed; the terms of office of such department officials should be coextensive with that of the mayor, and no longer; the mayor should have the absolute power of removal, for cause, of all department officials appointed by him, and such removal should not be subject to the approval of the Governor; many offices now appointive should be elective, and the people should be more thoroughly trusted in the management of their own municipal affairs.

If powers are sometimes abused, it does not follow that they should be wholly withdrawn. A proper form of municipal government should be established, to which there should be given a steadfast adherence. The fact that bad men are occasionally elected furnishes no argument for the changing of a system to which there is otherwise no objection.

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expediency of such proposed consolidation with recommendations relative thereto. This movement resulted in the creation of what has since been known as "Greater New York." L. 1896, chapter 488, provided for a commission to prepare a charter for the new city. Such new charter was enacted in 1897, chapter 378, and the charter was revised and amended in important particulars by L. 1901, chapter 466.

The authorization of the appointment of a competent commission, limited in number, but composed of former mayors, corporation counsels, comptrollers, or others familiar with the city government, together with a few leading citizens of each party, and intelligent representatives of all classes and interests, to frame and report a new charter, would unquestionably lead to the preparation of an improved and reasonably satisfactory one, and would be a progressive and practical step in the cause of municipal reform. It is, of course, understood that the commission so appointed should submit its report to the Legislature for adoption.

The difficulty is that heretofore there has been altogether too much vague talk of reform, and too many elaborate theories have been advanced with little or no practical effort to accomplish anything of real benefit to the city. It is submitted that the creation of a charter commission is something practical and worthy of immediate adoption.

Tenth. The abolition of the Regents of the University, and the transfer of most of their powers to the Department of Public Instruction.[6]

Eleventh. The abolition of the State Board of Charities, and the concentration of its powers in a single officer.[7]

Twelfth. The abolition of the State Board of Health, and the vesting of its powers in one officer.[8]

The last three measures (numbered tenth, eleventh and twelfth) were fully discussed in last year's message, and the reasons for their enactment fully set forth. It seems unnecessary to repeat the arguments then presented. It is sufficient to say that the essential object sought to be accomplished by each of said measures is the same, namely, the proper concentration of power upon a single official in whom the full responsibility for official action should vest. The unification of the supervision of the educational interests of the State, involved in the abolition of the Regents, is especially desirable.

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[6] As to the abolition of the Regents of the University, see 1886, note 9, *ante*, p. 171.

[7] As to the abolition of the State Board of Charities, see 1886, note 10, *ante*, p. 173.

[8] As to the State Board of Health, see 1886, note 11, *ante*, p. 175.

It is one of the great defects or evils in the present system of the discharge of public duties by large bodies or boards of officials, that there is no one who is personally, individually or solely responsible for whatever action is taken. A division of responsibility naturally begets looseness of administration. It is believed that power and responsibility should be united, and go hand in hand, and that thereby the efficiency, usefulness and economy of the public service will be greatly promoted.

Thirteenth. An enabling act for the purpose of enforcing that provision of the Constitution which declares that: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind."[c][9]

Much legislation has been heretofore proposed, but none has ever been actually perfected to carry out this constitutional guaranty of religious freedom. There should be enacted whatever proper measure may be essential to fully and entirely secure the salutary objects intended to be accomplished by the provision of the Constitution above quoted.

Fourteenth. An amendment of the criminal law by providing for its more speedy enforcement in cases of murder in the first degree, by allowing an appeal directly, or in the first instance, from the Court of Oyer and Terminer to the Court of Appeals.[10]

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[c] Const. 1846, art. 1, § 3.

[9] As to the free exercise of religious profession and worship, see 1885, note 7, *ante*, p. 25, and 1892, chapter 396.

[10] As to the enforcement of the law in cases of murder in the first degree, see 1885, *ante*, p. 37 note; also 1886, note 15, *ante*, p. 181, and L. 1887, chap. 493.

Fifteenth. An act limiting, regulating and restricting the power of corporations in the issue of stock and bonds. The manner in which corporations under existing laws are permitted to issue and place upon the market stock and bonds, representing little or no valuable consideration or equivalent actually paid in, and which, although not legally, yet, in effect, are a fraud upon the corporations as well as an imposition upon the purchasers and the public — presents a crying abuse and loudly calls for legislative interference.

Sixteenth. A general law providing specially for the incorporation of trades unions.

CONDITION OF THE STATE.

Finances.

The condition of the finances of the State is gratifying. The debt has been reduced $134,650 during the past fiscal year, by the payment of $100,000 Niagara Reservation bonds and $34,650 Canal bonds. On the 30th day of September, 1886, the total funded debt was $9,327,204.87, classified as follows:

General fund (Indian annuities)	$122,694 87
Canal debt	8,304,510 00
Niagara Reservation bonds	900,000 00
	$9,327,204 87
Aggregate Sinking Fund	5,051,073 82
Total debt unprovided for	$4,276,131 05

The increase of the annual expenses required for the government of the State is a matter for serious consideration.

While the tax rate for the fiscal year is 2 95/100 mills and that of last year was 2 96/100 mills, there was in fact no reduction of taxation, as the taxes levied last year amounted to $9,160,405.11, and those of this year to the sum of $9,512,812.91, showing an increase of $352,407.80, and this, notwithstanding the fact that not a dollar was appropriated toward the completion of the Capitol, and the amount necessarily required to prevent the prisoners in the State prisons from being kept in idleness was refused, and several other equally meritorious appropriations, demanded by the best interests of the State at large were rejected, while local appropriations, in which particular localities were specially interested, were granted with exceeding liberality, and to such an extent that I felt compelled to withhold my approval from items, mainly of that character, amounting in the aggregate to the sum of $326,747, which, if they had not been disapproved, would still further have swelled the taxation of the present fiscal year.

The exercise of a wise economy in all the departments of the State government is imperatively demanded. The expenses of the Legislature are annually increasing, augmented by long sessions, which are occasioned in great part by the vast volume of local and special legislation enacted, much of which, it would seem, might well be avoided or prevented by the passage of general laws.

Taxation.

During the past few years additional schemes of taxation have been adopted which have proved successful and brought new sources of revenue to the treasury. These are the Corporation Tax Law, whereby a direct State tax is laid upon certain corporations, the amount received from this tax alone during the fiscal year being the sum of $1,376,061.44; the tax on collateral inheritances under the act of 1885, which realized the sum of $84,128.92 during the fiscal year; the special tax on the organization of corporations, which only went into effect on April 16, 1886, and from which was received, up to September 30, last, the sum of $53,600.06, and up to this date the sum of $48,061.77 additional, making a total of $101,661.81. Last year an act was passed which went into effect on May first, whereby a small sum was required to be paid for the benefit of the State by each notary public upon his acceptance of the office, and there has been already realized from this source alone the sum of over $4,300, and it is estimated that this special tax will annually produce not less than $25,000, being more than sufficient to pay the entire annual expenses of the Executive Department.

It would seem to be desirable that other and new methods of raising revenue should be devised, in order to relieve the people from the burdens of increased direct taxation. While the times are slowly but steadily improving, our tax payers feel keenly the necessity of continued retrenchment, and every possible reduction of taxation will be greatly appreciated at the present time.

Another form of special taxation has been suggested, which is to require a specific tax to be paid upon all contracts for the sale of stocks, or bonds of corporations, or for the sale of petroleum, drugs, cotton, tea, coffee, pork, grain and other produce, which contracts are popularly known as the transactions of "bucket shops," so called, wherein such property so assumed to be sold or purchased is not understood in fact to be sold or purchased or intended to be transferred or delivered, but the transactions are in effect, though not in form, bets or wagers upon the future market prices of such property. These transactions are immense, and are increasing in amount throughout the State, and, being difficult to prevent or to control by law, they could be restricted to some extent by being subjected to a special percentage tax, graded in proportion to the amount of the operations, and could be made to yield a handsome annual revenue to the State. Such a species of taxation would work no injustice to any legitimate business, and those who engage in such purely speculative and non-productive methods of obtaining a livelihood can easily afford to liberally contribute toward the expenses of the government of the State which protects or tolerates their peculiar vocation. It need hardly be stated that the legitimate business transactions of any regular broker, banker or commission merchant are not intended to be included in this suggestion for taxation, nor is it desired that they should be affected by the proposed legislation.[11]

It is submitted that it should be the effort of the Legislature to devise means to lessen the present burden of taxation upon real estate, and, among other ways, by providing for the taxation of that species of property which now almost entirely escapes assessment, to-wit: The indebtedness of corporations, joint-stock companies and associations, represented in the scrip, bond or certificates of indebtedness issued by such bodies, and the imposition of a special tax thereon to be fixed by law and to be collected from such organizations by the Comptroller of the State. This plan is believed to be a simple but effective method of reaching a class of property heretofore wholly untaxed as against the bodies issuing the evidences of indebtedness mentioned, and practically not taxed at all as against any one, under the present defective method of taxation, whereby personal property so largely escapes all taxation. It is, of course, understood that the details of the bill should provide against the possibility of any double taxation, which can easily be done.

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[11] As to the tax commission see 1881, note 1, *ante* vol. 7, p. 515. See under head of *Thirty-Day* bills, June 25, the veto of a bill to tax bucket shops; also L. 1905, chap. 241, imposing a tax on transfer of corporate stock.

The people will welcome any relief to taxation upon real estate, and approve any fair proposition the tendency of which is to equalize the burdens of taxation, and to compel personal property to bear its proper proportion of the expenses of government.

The assessed valuation of personal property of the State, in 1875, was over four hundred and seven millions of dollars, and in 1885 it was only three hundred and thirty-two millions, showing a decrease in ten years of seventy-five millions. In one year alone — from 1884 to 1885 — there was a decrease of over thirteen millions. It is evident that this decrease has been upon the assessment-rolls alone, and that the value or amount of personal property in this State has not, in fact, decreased, and demonstrates that our tax laws are either grossly defective, loosely or fraudulently executed, or shamefully evaded.

A glance at the situation in other States and the comparisons afforded thereby furnish ample evidence upon this subject.

In 1880 the assessed valuation of personal property in Massachusetts was over four hundred and seventy-three millions, being over one hundred and fifty-one millions more than the valuation of personal property in this State in that year. In the same year the personal property in Ohio was assessed at over four hundred and forty millions of dollars, being one hundred and eighteen millions, or thereabouts, in excess of the assessment of the personal property in our State in that year. In Ohio the personal paid about forty-two per cent. of the State tax. In Massachusetts it paid about forty-two and sixty-one one-hundredths per cent.; in Indiana, with a personal valuation of one hundred and eighty-nine millions, or thereabouts, it paid about thirty-five per cent.; in Illinois, with a personal valuation of about two hundred and eleven millions, it paid about thirty-seven per cent., while in the great State of New York, embracing the city of New York, wherein is believed to be concentrated and possessed a large share of the wealth of the country, the personal property, in the year 1880, paid but about fourteen per cent. of the State tax, and in the year 1884 only about eleven and forty-seven one-hundredths per cent. of such tax. The remedy for these glaring inequalities was distinctly pointed out in the message of last year.

THE CONSTITUTIONAL CONVENTION.

The people at the recent election having voted in favor of the holding of a constitutional convention, it becomes the duty of the Legislature, at this session, in obedience to the mandate of the Constitution (art. XIII, sec. 2), to "provide by law for the election of delegates to such convention." The number of delegates of which such convention shall be composed, their qualifications and compensation, the manner of their election, and the territory or districts which they shall represent, the time of their assembling, and other important matters of detail are not laid down or prescribed in the Constitution itself, but are left to the discretion of the law-making power, to be manifested and declared in a statute now to be enacted. It is essential that these details be not hastily or lightly determined, but only after most careful and deliberate consideration, as the ultimate success of the work of the convention may much depend upon the manner of the disposition of these preliminary questions.

The convention of 1821 was composed of one delegate elected from each Assembly district in the State. The convention of 1846 was chosen in the same manner and consisted of one hundred and twenty-eight members, corresponding to the number of Assembly districts. The convention of 1867 consisted of one hundred and sixty members, of which one hundred and thirty-two were elected from Senatorial districts (four from each district), and thirty-two were elected by the State at large, no elector being permitted to vote for more than sixteen delegates, the effect being that the delegates-at-large were thereby equally divided between the two principal political parties of the State.

While it is desirable that the convention be a sufficiently numerous body to enable all parties and classes, as well as all the varied and diverse interests in the State to be represented, or have a fair opportunity for representation, it may be questioned whether a somewhat smaller body than the last convention may not be preferable and tend to insure more expeditious, efficient and satisfactory work. A convention of limited size, if chosen upon such a basis as to be thoroughly representative in its character, can as well express the sentiments of the people as a larger one, and seems in every respect more desirable. A smaller body tends to prevent tedious and unreasonable debate — can be more economically conducted, and can more readily accomplish practical results, while at the same time it is enabled to act with greater deliberation.

The last convention, by reason of its numerous membership, was manifestly a cumbersome and unwieldy body, inclined to interminable discussion, and disposed to devote much time to the consideration of innovations of every conceivable character. Its sessions continued for almost nine months, and it cost the tax payers of the State the sum of $385,531, and its work was, finally, mainly rejected by the people.

The Constitutional Commission of 1872, composed of thirty-two members, sat but fourteen weeks, and cost only the sum of $24,916, and its work was substantially all approved by the people.

It is believed that, so far as is possible, the various interests in the State should be represented in the convention, which should include not only the adherents of the two principal political parties, but the prominent representatives of the prohibition, license, woman suffrage, labor reform and anti-monopoly sentiment, as well as those identified with any other special interest of importance desiring changes in the organic law of the State, thereby rendering it emphatically the people's convention as contemplated by the Constitution. For this purpose it is deemed advisable that as many delegates be elected from the State at large as may be practicable; and experience seems to show that this method will also be more likely to secure a better class of delegates than the district system.

It is suggested that the convention should consist of one hundred and ten delegates, of which sixty-eight should be elected by districts, two from each congressional district, and forty-two should be elected from the State at large, no elector being permitted to vote for more than fifteen delegates, and the forty-two delegates receiving respectively the highest number of votes should be declared elected. This would probably secure fifteen delegates-at-large to each of the two principal political parties, leaving twelve delegates-at-large to be selected by other interests, and leaving the district delegates to be elected as the electors of the various districts should determine — either according to existing political divisions, or upon a non-partisan basis, or otherwise. If it should be deemed desirable to further adopt the system of minority representation, it might also be provided that in voting for district delegates each elector should vote for only one delegate, and the two candidates receiving respectively the highest number of votes in any district should be elected.

It is submitted that the district delegates should be selected by Congressional, rather than Senatorial or Assembly districts, because the last apportionment made in the State (which was in 1883) related to Congressional districts and was based upon the Federal enumeration of 1880, while there has been no apportionment of Senatorial or Assembly districts since 1879, which was based upon a State enumeration made in 1875 — over eleven years ago — and it is admitted that the population of the several districts has greatly changed since that period.

It is assumed that in a matter of such vast consequence and importance as the revision of the Constitution, there will be no endeavor to obtain any supposed political or partisan advantage by a refusal to permit the people of the State to be fairly and equitably represented in their own constitutional convention according to the last enumeration and apportionment of its inhabitants.[12]

A STATE GAS COMMISSION.

There has been much complaint of late years in regard to the alleged abuses and extortionate charges on the part of gas companies. Such complaint has not been confined to any particular section of the State, although it has principally come from the city of New York; and the general desire to remedy it in that city found expression in several measures which were passed by the Legislature last year, three of which were approved, but one of which I felt compelled to veto.

It is understood that the enactments which were approved have given a considerable measure of relief to the gas consumers of the city of New York, without, so far as can be discovered, doing injustice to the companies. The bill which was disapproved was not only seriously defective in many respects, but it established a special gas commission for that city alone, rather than a State commission, and was, therefore, clearly objectionable. It also conferred upon such local commission certain extraordinary and dangerous powers.

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[12] See *post*, p. 470, for the report of the Assembly committee on the Governor's veto of the constitutional convention bill.

It is suggested that the public demand for the correction of any abuses which may still exist, and which have not already been entirely remedied, may be met by the passage of a measure, not local in its character, but providing for the appointment of a State commission, with power, under reasonable restrictions, to regulate and control the management of all gas companies throughout the State, to investigate all overcharges and other complaints; to report its recommendations to the Legislature, and, in general, to possess over gas companies powers somewhat similar to those which the Railroad Commission of the State has over railroad companies; such commission to be maintained without cost to the State, but at the expense of the gas companies, in a manner analogous to that in which the Insurance Department and the Railroad Commission are now supported. It is believed that such a measure, carefully perfected in its details, as its importance requires, and aiming to do exact justice between the companies and the consumers, and protecting each in a fair and equitable manner would meet with no opposition from any source, and relieve the Legislature from the annual clamor for special legislation, and at once afford a satisfactory solution of many difficult questions pertaining to this subject.

The propriety of framing the proposed measure, so as to include within its provisions all electric and other lighting companies, is also suggested for your consideration.[13]

THE INTERESTS OF LABOR.

Your attention is especially invited to the subject of the relations of labor to the State, and it is hoped that it may receive such wise and judicious consideration as its merits and the increasing interest which its discussion everywhere evokes, would seem to demand at your hands.

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[13] In 1905 by chapter 737, a commission of gas and electricity was established "with power to regulate the price of gas and electric light, and certain other electrical services, and to provide for the control and supervision of gas, electric light and other electric corporations." The commission was to be composed of three members appointed by the Governor and Senate. This commission was abolished in 1907. chap. 429, and its powers were vested in the Public Service Commissions created by the latter act.

It is useless to shut our eyes to the fact that there seems to be a growing discontent among the industrial classes, at least in certain portions of the State, and especially in our large cities, and it is the province of those intrusted with authority to endeavor to alleviate and pacify it.

It is not believed that there exists any desire on the part of intelligent workingmen to overturn the foundations of society or to imperil the peace and good order of the State. Their true interest lies in the preservation of our free institutions, in the security of property and the protection of chartered, as well as individual rights. They seek the correction of the wrongs of labor, but not by violence, anarchy, agrarianism or communism. They naturally and properly desire to benefit their condition in life, impelled by honest purposes and an enlightened self-interest, inherent in every enterprising and progressive man. They have no form of government or organization of society to suggest, inconsistent with the welfare of all the people, nor do they demand in their behalf any vague and incomprehensible schemes of Utopian progress.

What the thoughtful workingmen of the State want is not glittering generalities or fine-spun theories, but practical measures of relief. It should be our aim to study their wants, to respectfully and attentively listen to their complaints, to dispassionately discuss their proposed projects, and in a kindly spirit to intelligently distinguish between their real and their fancied grievances. It is believed that a more generous recognition of their claims to public positions would not only familiarize them with the duties and responsibilities of public trusts, and quicken their realization of the difficulties involved in attempting to furnish a panacea for all the evils incident to society, but would as well tend to bring about more harmonious relations between capital and labor, and between all classes of the people.

It is the growing impression, founded upon much truth, that offices are too frequently sought by and bestowed upon wealthy men who obtain them by the lavish and improper use of money rather than any real merit of their own. This fact discourages men of moderate means from seeking official honors, and creates the conviction in the minds of workingmen that public positions are not within their reach.

The propriety of lessening the hours of the daily labor of workingmen, so far as the same can be properly controlled or regulated by law, is commended to your careful consideration.

It is the true policy of the State to elevate and dignify labor, not by exacting the greatest amount of toil that the laboring classes are capable of furnishing, but by legitimately encouraging every honest effort to improve their condition, and requiring that only reasonable hours of labor shall constitute a day's work, for which full and adequate compensation should be received.

The fact should be recognized that in all branches of business, and in all the activities of life, there is a growing tendency toward greater relaxation from toil, and more recreation, especially in certain seasons of the year. It may be safely asserted that where ten persons took a vacation during the summer months fifteen years ago, hundreds do so now, and yearly the number is increasing. While merchants, bankers, ministers, lawyers, physicians, teachers and other business and professional men take long vacations in summer or winter, and sometimes in both, such absences are usually impossible on the part of mechanics and workingmen, and any relief to them must come, if at all, in reduced hours of labor and more recreation at their own homes. Labor-saving machinery, the appliances of science, and the general improvements of the age, coupled with the genius, skill and intelligence of our artisans and laborers, have rendered unnecessary the constant and exacting toil and the great volume of labor which characterized the employments of our forefathers, and also have enabled us to dispense with much of the unremitting exertions which seemed to be required even a few years ago. The customs and habits of the people are changing with the growth of the country, and all alike should receive their just share of the benefits and advantages which arise from the changed condition of affairs and from the results which mark the progress of civilization.

The dignity of labor can best be preserved by insisting that labor shall be better compensated. Increased compensation will furnish greater facilities for education, more comfortable homes, more contented families and better opportunities for recreation, as well as tend to develop nobler aims and purposes on the part of workingmen, greater interest in the peace and prosperity of the State, and higher ideas of citizenship.

Poverty is one great source of discontent. Overwork, poorly recompensed, is another. It is, therefore, suggested that the demand of wage-workers for shorter hours and increased compensation presents a subject entitled to respectful consideration at your hands, to the end that such legislation may be enacted as may best aid the accomplishment of such benign results.

I had the honor of saying in my first annual message, in 1885, that: "It is evident that labor does not receive its fair proportion of the rewards which industry and honesty entitle it to share," and the sentiment will bear repetition. To provide a remedy for this inequitable condition of affairs, in so far as it can be corrected by the passage of just and wholesome laws, may be deemed the duty as well as the pleasure of the Legislature.

Whether or not any reduction of the hours of daily labor is practicable or enforceable by statute, there can be no question as to the power of the Legislature to declare certain days to be legal holidays, and it may be advisable to establish by law additional holidays for the benefit of all, and especially for those who daily perform arduous and exacting labor, and in that view to designate every Saturday, or the half-day of every Saturday, as legal and public holidays, or half-holidays.

In many branches of business, especially in our large cities, every Saturday afternoon is practically regarded as a holiday, as active business substantially ceases at noon of that day, and there would seem to be no reasonable objection to extending this custom so that it should be legally applicable to all kinds of business and occupations, and afford a much needed relief to a large class of deserving people. If, for any reason, a half-holiday is legally or otherwise objectionable, the whole of every Saturday or every other Saturday could be thus set apart, and such objections obviated.

In any event, I recommend that the first Monday in September in each year, or some other day that may be deemed appropriate, may be made by statute a legal holiday, to be known as "Labor Day," and to be observed by all the people as a day of festivity and recreation, and devoted especially to the interests and welfare of labor.[14]

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[14] By chapter 289, passed May 6, 1887, the first Monday of September was declared to be a holiday, and to be known as Labor Day.

Hours of labor were fixed by L. 1867, chapter 856, which provided that eight hours between sun rise and sun set, should constitute a day's work, but the act did not apply to farm or agricultural labor, or employment by the year, month or week, nor prevent contracts for over time.

This statute was merged in and repealed by the act of 1870, chapter 385, which prescribed eight hours as a day's work for mechanics, workingmen, and laborers, excepting those engaged in farm or domestic labor. The act permitted overwork for an extra compensation. The act applied to employment by the State and by municipal corporations.

The provisions of the act of 1870 relating to hours of labor were included in and repealed by the Labor Law, L. 1897, chapter 415.

Section 3 of the Labor Law, which includes hours of labor, was amended in 1899, chapter 567, by requiring contracts for employment on public works by the State or a municipal corporation, to contain a stipulation that employes should not be permitted "to work more than eight hours in any one calendar day, except in cases of extraordinary emergency caused by fire, flood or danger to life or property."

I commend to your favorable consideration some measures looking to the greater safety and better regulation of the tenement-houses in our large cities. An exhaustive investigation of the tenement-house system in New York city, in the year 1884, revealed the wretched condition of those who, from poverty, are forced to occupy dilapidated and ill-ventilated buildings, into which they are crowded by the criminal cupidity of the owners. This investigation resulted in the suggestion of valuable remedial legislation, but so far no bill has been passed and no relief secured. The helpless condition of these people, who are unable to prepare elaborate memorials praying for relief, and in whose interests no persistent counsel appear to urge legislation, should enlist the earnest and early efforts of the present Legislature.[15]

For various penal provisions on this subject, see Penal Code, section 384h.

Several features of the Labor law, including hours of labor, rate of wages, and contracts of employes, were construed and condemned in People ex rel. Rodgers v. Coler (1901), 166 N. Y. 1; Ryan v. People (1903), 78 App. Div. 134; Lochner v. New York (1905), 198 U. S. 45, reversing 177 N. Y. 145; People v. Orange County Road Const. Co. (1903), 175 N. Y. 84; People ex rel. Lentilhon v. Coler, 61 App. Div. 223; People ex rel. Cossey v. Grout, 179 N. Y. 417. See People v. Williams (1906), 51 Misc. 383.

The Constitution was amended in 1905, by adding the following provision to article 12, section 1:

> "The Legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the State or by any county, city, town or village or other civil division of the State, or by any contractor, or sub-contractor performing work, labor, or services for the State, or for any county, city, town, village or other civil division thereof."

Following this amendment, which took effect January 1, 1906, section 3 of the Labor Law was amended by L. 1906, chapter 506, which re-enacted several provisions of former laws which had been held unconstitutional.

[15] Chapter 84, passed March 25, 1887, amended the New York Consolidation act, L. 1882, chapter 410, by requiring a specified number of police officers to be detailed for the purpose of enforcing the provisions of the Sanitary Code relative to tenement houses.

Chapter 288, passed May 6, amended section 661 of the Consolidation act, which regulated the erection of tenement houses, by authorizing an injunction to prevent a violation of the provisions of the section.

L. 1887, chapter 84, was sustained in Health Department v. Trinity Church (1895), 145 N. Y. 32.

There are many reasons which may be urged why the law in regard to the recovery of damages in case of the death of a person, caused by the negligence of another person or of a corporation, should be amended by removing the present restriction on the amount which may be recovered and increasing the same from $5,000 to $10,000.

It must be admitted that it is difficult to see why a party injured through the negligence of another should be permitted to recover full compensation in case he survives the injury, but in case of his death his wife and family or personal representatives should be restricted to the amount of $5,000.[16]

The statutes of the State should make no unfair discrimination against workingmen. Whatever sections of the Penal Code there are which, by a fair or even by a strained or harsh construction, can be interpreted to prevent laboring men from assembling, combining or agreeing in a peaceable and orderly manner, to act unitedly in the matter of wages, working or not working, patronizing others or not patronizing them, and otherwise by their joint action illustrating the power of union, and protecting and enforcing their inherent and natural rights — such sections, if they are capable of being construed so as to adjudge such actions to be "conspiracies," should be promptly modified. The public do not need the alleged protection of such objectionable laws, and workingmen should not be permitted to suffer under such restraints in their well-intentioned efforts to promote their welfare.

The laws in reference to the collection of wages should be amended by giving the workingmen the same remedies and facilities for the collection of their wages as are now afforded to women by recent statutes.

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[16] The subject of damages for injuries causing death was considered by the Constitutional Convention of 1894, by which the following provision was included in the Constitution, article 1, section 18:

"The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation."

The propriety of authorizing the appointment of a special labor commission to examine the whole subject of the grievances of labor; to hear complaints and suggestions; to take evidence, if deemed necessary; and to recommend measures for adoption to this or the next Legislature, having for their object the promotion of labor interests and the welfare of the industrial classes, is commended to your thoughtful consideration.

The intelligent and deliberate determination and report of such a tribunal would unquestionably devise many desirable measures of relief, and remedy numerous existing grievances, and, at the same time, relieve the Legislature from the passage of many crude and imperfect bills relating to labor subjects which are annually presented for their consideration.

ADULTERATION OF FOOD.

Our statute books for many years have borne laws designed to prevent the manufacture and sale of adulterated food and drugs. Within a few years particular attention has been directed to specific branches of the subject, and enactments have been made in relation to milk, butter, cheese, confectionery, hops, vinegar and canned goods. Those laws should be enlarged so as to include numerous other articles of consumption. The prevention of the sale of impure and fraudulent articles of food is of the greatest importance, not only to the health of all, but as well to the commercial prosperity of the farmers and merchants of our State. Every person is a consumer and so interested on the score of health or economy, and on the latter account particularly those wage-earners, the larger part of whose limited income is necessarily spent for food. The thousands of honest producers and distributors are also concerned, or should be, on the score of legitimate protection to trade.

In carrying out such laws as we have upon this subject, good work is done by various departments of the State government and by the local boards of health in several of our cities, but some enlargement in the scope and effectiveness of these laws can well be made. Other countries have brief and simple enactments, which are believed to afford their people protection in a great measure from injurious ingredients in food, or at least to afford purchasers knowledge, by means of proper labels or conspicuous notices, of the composition and quality of the goods purchased.

I recommend that such laws as we have relating to the adulteration of food and drugs shall be amended where necessary, and be brought together in one general statute, and that power to enforce such a statute shall be vested in the State Board of Health, or in such single official as may be substituted for it, and I especially recommend that there be incorporated therein some plan for the effective enforcement of such a law by the combined action of local boards of health throughout the State.[17]

ARBITRATION OF LABOR DISPUTES.

The Legislature last winter very wisely inaugurated a system of arbitration as a means of legally settling labor disputes. This action was taken at the request of the labor organizations of the State, and a bill was passed entitled

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[17] Chapter 223, passed April 27, and chapter 430, passed May 23, 1887, amended former statutes relative to the sale of impure milk.

Chapter 583, approved June 16, amended former laws relating to the sale of dairy products.

Chapter 630, approved June 18, related to the adulteration and sale of wines.

"An act to provide for the amicable adjustment of grievances and disputes that may arise between employers and employees, and to authorize the creation of a State Board of Arbitration," which measure met with prompt approval, and has since attracted widespread attention.

Under its provisions a competent State board was appointed by the Executive, which was unanimously confirmed by the Senate, and although the law has been in operation but a little over six months, and while the board at the start met with some obstacles in its work, as those for whose benefit the measure was specially enacted were somewhat suspicious of it, and reluctant to avail themselves of its beneficent provisions, yet latterly, as the law has become better understood and the true functions of the board have been comprehended and appreciated, its services have been repeatedly sought, and it has amicably, and with reasonable satisfaction, adjusted many serious and important labor differences, and the wisdom of its creation is steadily becoming more apparent.

It is to be regretted that, by the terms of the law, the existence of the Arbitration Board is limited to one year. It is apparent that this period is not sufficient to afford a satisfactory test of the real merits of the measure, and there now seems to be a general desire, particularly in labor circles, that the commission should be extended for a term of years in order that the advantages of this system of settling labor difficulties may be fully demonstrated. In view of the conceded and growing importance of the subject, I am inclined to recommend that such course be adopted.[18]

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[18] Chapter 63, passed March 10, authorized the creation of a State Board of Mediation and Arbitration, and provided for the amicable adjustment of grievances and disputes that might arise between employers and employes. The board was to be composed of three persons appointed by the Governor and Senate, for terms of three years.

MANUAL TRAINING IN SCHOOLS.

Not the least important element in the present status of the labor question is the apprenticeship and education of the growing youth, upon whose training and fitness for action so much of the future, both in national welfare and individual well-being, depends. The decadence of apprenticeship is a fact full of serious and far-reaching consequences, and it is in accordance with a wise policy to seek a remedy. Apprenticeship laws are still extant on the statute books, but investigation proves that, to all intent and purpose, they are practically a dead letter. In the march of time the old apprenticeship system has been left behind. As machinery has advanced, apprenticeship has declined.

Any inquiry into the present and future prospects of labor necessarily involves some inquiry into education, its principles and its purposes. Reliable statistics prove that a large majority of all skilled workmen in this State are of foreign birth, but few native-born Americans being found in any of the more prominent industries, a fact full of significance and one that furnishes food for the most serious reflection; and without attempting, at this time, to enter into any general discussion of our present public school system, there is, nevertheless, a conviction that it is largely responsible for our present condition in this respect. Education with us is not the privilege of the few but the right of the many, and the changes in the course of trade and business, in mode of travel and transmission, in our arts and manufactures generally, all suggest the necessity of changes in our methods of education. Our literary education, so to term it, comes far short of our needs. It seems hitherto to have been with a view to rudimentary general knowledge for commercial and professional pursuits, there being no adequate provision for the particular wants of the artisan and day-wage-earner. There is an evident growing sentiment that public school education should not be limited to what is called "book-learning," but that there should also be some preparation for that labor to which a vast majority in all countries are destined. In our present industrial conditions any system of public education that does not fit our youth to earn a living is a failure. It is not believed that the present system, successful as it has been in the past, is sufficient for the future needs of our American youth; and I would therefore recommend making manual training, within certain limits, a part of the public school system, certainly in the cities and larger towns of the State, and also urge the necessity of a new and stringent apprenticeship law to meet the requirements and wishes alike of manufacturers and organized labor; a law that will be in harmony with our changed industrial conditions, and in sympathy with that public sentiment which demands that our youth of both sexes shall be given an opportunity to compete with the imported skilled labor.[19]

PROTECTION FROM RAILROAD FIRES.

The frequency of fires caused by locomotive engines, and the injuries sustained thereby, to the property along the lines of the railroads of the State, and the inadequacy of existing law to properly protect and indemnify the owners of such property, render the passage of some remedial statute in relation thereto peculiarly appropriate.

Under the decisions of the courts of our State, railroad companies are not now liable for damages by fire set by their locomotives, unless it can be proved that they are guilty of negligence in the construction or operation thereof. This proof it is oftentimes very difficult or impossible to furnish, and it is believed that the liability should not depend upon that question, but that a sound public policy requires that they should be absolutely liable for all such damages, and that a statute to that effect should be enacted for the protection and indemnity of our farmers and others owning property on the route of railroads.

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[19] In 1888, chapter 437, the act of 1871, chapter 934, relating to apprentices and employers, was amended by imposing certain duties on the factory inspector relating to the enforcement of the act.

It is understood that such a statute as is here proposed has been in operation in Massachusetts since 1840, and the propriety of its enactment in this State is indorsed by the Board of Railroad Commissioners.

The statute should provide that the railroad companies be regarded as having an insurable interest in the property upon their routes, and be permitted to procure insurance thereon in their own behalf, and thus amply protect themselves.

ABOLITION OF ANOTHER UNNECESSARY OFFICE.

In addition to those offices, the abolition of which was recommended by me last year, which recommendations I have reiterated, there is the office of "State Agent for Discharged Convicts," which it is believed can, with advantage, be done away with. The duty of the State Agent is to visit the various penal institutions once in each month, to confer with those convicts who are about to be discharged the following month, for the purpose of inducing them to proceed immediately to suitable homes and places where employment will be provided for them, and to furnish them with clothing, transportation, tools or money. In actual practice only the three State prisons receive the slightest benefit of this law.

The sum appropriated for the purposes of the State Agent is seventy-five hundred dollars, of which sum it appears he receives as salary and for expenses thirty-five hundred dollars, thus leaving four thousand dollars for distribution to discharged convicts. In other words, it cost the State thirty-five hundred dollars to distribute four thousand.

From investigation I am satisfied that the duties of the State Agent can be better performed by the wardens of the prisons without any additional expense, and that thereby discharged convicts will receive the full benefit of the appropriation nominally made for them, instead of dividing almost half of it with an official whose services are superfluous, to say the least.[20]

CONCLUSION.

The reports of the various departments of the State will soon be submitted to you, and your careful attention is invited to them for details relating to their work, which will be found there presented in much better form than is practicable in an annual message. The omission to refer to these departments, respectively, is not to be construed as due to any lack of appreciation of the importance of their work, but is because of the desire that this communication shall have at least the merit of brevity.

The consideration of the suggestions that have already been made is sufficient to occupy a session of reasonable length. If the Legislature shall earnestly seek to avoid unnecessary local and special legislation, and give its attention to the general matters of importance here presented, even if but a small proportion shall be finally perfected into laws it will make an honorable record and the session will be a memorable one in the annals of the State.

DAVID B. HILL.

SPECIAL MESSAGES.

January 13. To the Assembly: Transmitting the annual report of the Board of Commissioners of Pilots, and the annual report of the Adjutant General.

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[20] The office of State Agent of Discharged Convicts was abolished in 1895, chapter 93, which repealed the act of 1877, chapter 424, by which the office was established.

January 17. To the Assembly: Transmitting the annual report of the Civil Service Commissioners.

January 19. To the Assembly: Transmitting the annual report of the State Commissioners of Health.

February 1. To the Assembly: Transmitting the annual report of the Cooper Union.

February 7. To the Senate:

Veto of a bill entitled "An act to change the name of St. Luke's Home, in the city of Utica, and to provide for the qualifications and manner of electing its managers."

"The principal portion of this bill relates to and provides for a change of the name of the corporation known as 'St. Luke's Home.' Its name can be changed without the intervention of the Legislature.

Chapter 322 of the Laws of 1870, entitled 'An act to authorize corporations to change their names,' as amended by chapter 280 of the Laws of 1876, is ample and sufficient to effect a change in the names of this class of corporations upon application to the courts.

The other portions of the bill are regarded as unnecessary. The statute above mentioned expressly provides that any change in the name of a corporation made thereunder shall not affect or prejudice the 'rights or liabilities' of said corporation. The provisions of section 2 of the bill are, therefore, superfluous.

Section 3 contains provisions which are equally unnecessary or unadvisable. The qualifications of the managers and their election are sufficiently provided for in the general act relating to such corporations, and this is special legislation, which I cannot consistently approve."

The bill was not passed over the veto.

February 7. To the Assembly:

Veto of a bill entitled "An act to amend chapter thirty of the Laws of eighteen hundred and eighty-five, entitled 'An act to amend, revise and consolidate the several acts relating to the village of Oneonta, in the county of Otsego.'"

"The amendment proposed by this bill consists in absolutely prohibiting, within the corporate limits of the village of Oneonta, the burial of the dead, except in two specified cemeteries, and prohibits the location of any new cemetery within said limits. This amendment seems to be unnecessary.

The present charter vests in the board of trustees ample power to regulate the burial of the dead. It is a power which is very properly lodged with the local authorities, and it may be assumed that they will always act in accordance with public sentiment. I can see no good reason why they should be deprived of this power, or why the Legislature should, by a special act, prohibit the citizens of Oneonta from determining themselves such minor and local questions.

The bill violates the principle of home rule for villages. The burial of the dead, or the erection of new cemeteries in the village of Oneonta, is a matter which should not be determined at Albany, but by the local authorities of the village, who should be permitted to regulate it."

The bill was not passed over the veto.

February 17. To the Senate:

Veto of a bill entitled "An act changing the name of 'The Pittsburgh, Lackawanna and North-eastern Railroad Company' to 'The Central New York and South-western Railroad Company.'"

"There is no objection to this bill except that it is wholly unnecessary. By chapter 322 of the Laws of 1870, certain corporations of the State were authorized to institute proceedings in the courts to change their corporate names. By that act ‘ railroad companies and corporations created by special charter ’ were excepted from its provisions; but by chapter 280 of the Laws of 1876, the act of 1870 was amended by striking out the exception as to ‘ railroad companies and corporations created by special charter.’ Hence, railroad corporations are permitted to change their names, under the act of 1870, without the intervention of the Legislature.”

The bill was not passed over the veto.

February 17. To the Assembly:

Veto of a bill entitled "An act to legalize the official acts of certain justices of the peace, and authorizing justices of the peace to execute and file official bonds, and to take and subscribe the official oath."

“ This act legalizes the official acts of every justice of the peace who has neglected to take an official oath, or to give an official bond, or omitted certain things required by law to be done, and permits any justice heretofore elected or appointed who has neglected any of such matters so required by law to be done, to do the same within sixty days after the passage of this act.

The first objection to the enactment of this law is, that there is very little, if any, necessity for it. It has been the custom annually, for many years, to pass such a law, but there is really not much actual need of it.

The official acts of a justice of the peace who has been duly elected, and is acting as such, cannot be questioned, collaterally, even though he may have neglected to take an official oath, or to file an official bond. He becomes an officer *de facto* with color of lawful title, and while his official acts may not protect himself, still they are valid in so far as the public or third persons are concerned. This rule is well settled, and hence there is no public necessity for the passage of this law.

The second objection is that the constant passage of such acts tends to encourage looseness of administration among public officials, and furnishes a pernicious precedent. Every justice of the peace is given to understand, by the annual enactment of such laws, that it makes no difference whether he complies with the law imposing upon him the duty of filing an oath or a bond within the time required by law, or complies with it at all, as the Legislature will surely pass an act the following winter legalizing his acts and permitting him to perform his neglected duty at his leisure, or within what is equivalent, namely, two months' time.

So far as the justices themselves are concerned, they are usually entitled to no such relief. They are encouraged to become careless and indifferent by this very kind of legislation, and omit their plain duty upon the most frivolous pretexts.

So long as the public or third persons do not need the protection of this bill, it does not seem expedient to annually afford an inducement to public officers to neglect their duty. A justice of the peace who is not sufficiently acquainted with the law, or is so indifferent and careless as not to inquire what his duty is in these respects, ought not to be permitted to hold such an office, and the public will not suffer if his acts are not legalized, and he is permitted to retire to private life. By the frequent enactment of these legalizing acts the people become accustomed to think that it is very easy to procure an act of the Legislature, and that it is a trifling matter whether or not the laws of the State are strictly complied with. It is time to cry a halt as to this class of legislation, and this is a favorable opportunity."

The bill was not passed over the veto.

February 18. To the Senate:

Veto of a bill entitled "An act to provide for the election of a police justice and police constables in the village of Herkimer."

"This is a special act providing for the election of a police justice and police constables in the village of Herkimer. That village was not incorporated under a special act, but under the general law for the incorporation of villages, passed April 20, 1870.

The Constitution of the State forbids the passage of any act for the incorporation of villages, but provides that all villages hereafter created shall be organized under this general law.[d] This bill violates the spirit of the Constitution by enacting peculiar provisions which would be applicable alone to the village of Herkimer, and not to the other villages of the State.

The bill is virtually an amendment to the village charter, and an amendment cannot well be made where it would be improper to pass an original special charter. If the village of Herkimer is entitled to such special legislation, it follows that every other village in the State similarly situated is entitled to the same kind of legislation.

It is conceded that by the provisions of the general act of 1870, especially as amended by chapter 514 of the Laws of 1875, the citizens of Herkimer can accomplish substantially all the purposes intended to be accomplished by this bill, if they so desire. It seems, however, to be easier for them to apply to the Legislature and obtain a special act, rather than proceed under the general act. If the general law is defective in any manner, or does not answer all the purposes required, then the general law itself should be amended so that all the villages in the State incorporated under it may have the benefit of these new or desirable provisions.

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[d] Const. 1846, art. 3, § 18, added 1874.

There are too many villages in the State to warrant special legislation for each one of them every time that it imagines that it desires a change from existing methods. It is represented to me that this bill is favored by the best citizens of Herkimer, and I have no objection to its provisions, except that it is special legislation of the worst kind. The time of the Legislature ought not to be taken up with such matters. The attention of the legislators should be given to the enactment of general laws applicable to the whole State. It is a very easy matter to frame a general law which will answer all the purposes intended to be accomplished by this bill, if in any respect the present law is not adequate.

I regret exceedingly to differ with the Legislature upon these matters, but I am resolved, so far as lies in my power, to prevent a repetition of the volume of special legislation which has heretofore unnecessarily incumbered our statute books.''

The bill was not passed over the veto.

February 24. To the Assembly:

Veto of a bill entitled "An act to authorize the construction of sewers in Church street in the village of Saratoga Springs."

'' It will be observed that the title of this bill announces it 'An act *to authorize* the construction of certain sewers,' etc., etc., while the first section of the body of the bill declares: '*It shall be the duty* of the board of trustees of the village of Saratoga Springs to construct,' etc., etc. This provision makes the bill a mandatory rather than a permissive measure. As such it is contrary to those principles of home-rule which, to insure lastingly successful administration, should and must be applied as well to our own State as to distant countries.

If a bill is prepared, and meets the approval of the Legislature, giving to the board of trustees of Saratoga Springs certain additional powers in the matter of the construction of sewers, even though only applying to a limited portion of the village, I should be inclined to sign the measure.

The fact is recognized that Saratoga has need in particular directions for somewhat different regulations than those that will serve for the best government of other places of the State. But while this may be so in a few obvious instances, it can hardly be urged as a conclusive reason for attempting to legislate for this town at the Capitol at Albany rather than at the Town Hall of Saratoga.

The title ‘ trustee ’ itself supposes trust reposed. If the citizens of Saratoga do not take pains to elect men in whom the power to construct sewers can safely be vested, they can hardly with justice ask the State to be a guardian of their local interests.

Effective and economical home-rule for all the localities of the State will be secured only when every city, town and village becomes aware that reforms in local matters must be inaugurated and prosecuted to a successful termination by home effort, and not by the interposition of the higher power of the State Legislature.''

The bill was not passed over the veto.

February 25. To the Senate:

Veto of a bill entitled "An act in regard to the taxation of the real estate of the Young Women's Association of the city of Troy."

'' This is a special act which provides that the real estate now owned, or that may hereafter be acquired, in the city of Troy by the Young Women's Association of that city, not exceeding forty thousand dollars in value, shall be hereafter exempt from State and local taxation. My objection to such legislation is that it is special in its character. There is a general statute of the State which provides in detail what property shall be exempt from taxation. If it is desirable that an additional species of property should be exempted, it should be specified in that statute.

It is unquestionably true that the Young Women's Association of Troy is a deserving organization, and there may be great propriety in exempting its property from State as well as local taxation, but if such an association in the city of Troy is to be relieved from taxation, deserving associations in other cities are entitled to the same consideration. There should not be a special act in each particular case. The general law should be amended, and prescribe just what species of property or worthy charities throughout the State shall be exempted from taxation. The Legislature should not be called upon to consider the merits of each particular application when it is made, or to pass a special law whenever an exemption is deemed desirable.

There is no doubt in my mind of the propriety and soundness of this position. It is with great regret that I feel compelled to withhold my approval from this measure, intended to benefit so useful an association, but it is only by such action in particular bills that the attention of the Legislature can be brought to the general subject, and thus an enactment secured which will avoid the necessity in future similar cases of the interposition of the highest power of the State.

There should be a general statute covering all exemptions from taxation, so that all citizens and corporate bodies of our Commonwealth may stand upon an equal footing."

The bill was not passed over the veto.

February 28. To the Assembly:

Veto of a bill entitled "An act to amend section 4 of chapter 303 of the Laws of 1859, entitled 'An act to incorporate the Union Free School District No. 4, town of Orangetown, county of Rockland,' and to repeal section 1 of chapter 227 of the Laws of 1866, entitled 'An act to amend the act incorporating the Union Free School District No. 4, town of Orangetown, county of Rockland.'"[21]

"The only object of this bill is to change the time of holding the annual school meeting from the second Tuesday in October to the last Tuesday in August. It seems ridiculous that the passage of a law should be necessary to accomplish this simple object. Yet it undoubtedly is. The district is operating under a special law in which the time of the annual school meeting is fixed, and, therefore, it can only be changed by another special enactment.

I am of the opinion, however, that the proper way to correct this peculiar condition of affairs is to repeal the provision of the special act fixing the time of the school meeting in Union Free School District No. 4 of Orangetown, thus leaving the matter subject to the operation of the general law. The passage of such a bill will accomplish the result desired by the people of the district, and in all probability save some future special legislation."

February 28. To the Assembly:

Veto of a bill entitled "An act to legalize and confirm the official acts of notaries public."

"It has been the custom of late years to pass such a bill as this. It legalizes not only all clerical mistakes and trifling irregularities committed by notaries public, but also all their acts even though they omitted to take their oath of office as required by law, or are under age, or their term of office has expired, or they have changed their residence to another county, or have omitted to file certain certificates as required by law.

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[21] This bill was not passed over the veto. Chapter 391, passed May 19, 1887, amended the Orangetown school district act of 1859, chapter 303, by omitting the provision fixing the time for holding the annual meeting.

The act is very broad and sweeping. My objection to this kind of legislation is that it legalizes irregular and illegal acts by the wholesale, and encourages looseness in administration on the part of these and other public officials.

There seems to be no public necessity for the bill. The acts of acting notaries public are valid as against third persons, even though by reason of irregularities or omissions they might not protect the officials themselves. The enactment of a bill every year legalizing all the acts of these officials tends to encourage them in neglecting the observance, on their part, of the provisions of law required and intended for the safety and protection of the public. It is the experience of the Executive Department that these bills lead these officials to believe that it is perfectly immaterial whether or not they take any oath of office, or serve when they are under age, or reside in the proper county, as they believe that their acts will be made legal as soon as the Legislature meets.

The reasons given in a recent communication to the Assembly withholding my approval from a similar bill in reference to justices of the peace expresses more fully my objections to this legislation.

It is true that in other years this form of legislation has been approved, but I think it is better that it should now be stopped."

The bill was not passed over the veto.

March 7. To the Senate:

Veto of a bill entitled "An act to incorporate the Teachers' Mutual Benefit Association of the city of New York."

" There is no necessity for this measure. The objects of the proposed incorporation can be accomplished under the existing general laws of the State.

Chapter 267 of the Laws of 1875 expressly provides for the incorporation and organization of 'mutual benefit' associations. Teachers, lawyers, physicians, ministers or anybody else can organize a 'mutual benefit' association under its provisions, and there is not, apparently, the slightest propriety in enacting a special law for a particular class of people who can properly avail themselves of the general law already upon the statute book, which is ample and sufficient for every purpose. The teachers who have sought this special legislation have been wrongly advised as to their existing rights and privileges."

The bill was not passed over the veto.

March 14. To the Assembly:

Veto of a bill entitled "An act to enable the village of Sherburne to raise an additional sum of money for the purpose of building a new bridge over Potash creek."

" This is decidedly special legislation, and the title fully describes the purpose of the bill, which is to provide funds for building a bridge over a creek in a village. The next time this village needs a bridge over some other stream, or another bridge over this same creek, more legislation will apparently be necessary. It seems time this sort of lawmaking should cease, and I am convinced that the people of the State of New York never intended that the attention of the Senate and Assembly should be continually directed to matters of such purely local importance — trivial in their nature as compared with those questions which deserve careful consideration by the highest power of the State.

On this particular subject there should be a law enacted applicable to all villages, whether incorporated under special or general law, by which, upon a majority vote of the electors, a two-thirds vote of the trustees, or some other method, money could be raised for the erection of bridges or for other purposes of a similar character. There are hundreds of villages and thousands of creeks within our State, and some comprehensive general legislation applicable thereto may well find a place in our statute books.''

The bill was not passed over the veto.

March 16. To the Assembly:

Veto of a bill entitled "An act to amend chapter two hundred and forty-four of the Laws of eighteen hundred and forty-nine, entitled 'An act to incorporate the American Female Guardian Society.'"

'' This is a special act, and, under the form of an amendment to the special charter granted by the Legislature in 1849, provides for a change of the name of a corporation. This is all the object sought to be accomplished by the bill. Chapter 322 of the Laws of 1870, as amended by chapter 280 of the Laws of 1876, provides for the changing of the names of all corporations upon application to the courts. This statute is broad enough to include all corporations created by special acts, as well as those organized under general laws. If there is any doubt about the construction of the general statute, it should itself be amended so as to include such cases as this. This is special legislation and it cannot be approved. The courts are open, and the friends interested in the proposed change should apply to them and not to the Legislature.''

The bill was not passed over the veto.

March 16. To the Assembly:

Veto of a bill entitled "An act to authorize the town of Yorkshire, Cattaraugus county, to elect an additional justice of the peace."

"This is special legislation of the worst kind. The statute provides for the election of four justices of the peace in all the towns of the State. It is true that there have been precedents for this kind of legislation, but they should be avoided, rather than followed. The number of justices of the peace in each town should be uniform throughout the State, so far as possible. Every time a town fancies that it desires an additional justice of the peace the Legislature should not step in and authorize it. There are too many towns in this State to be constantly changing the number of town officers by act of the Legislature."

The bill was not passed over the veto.

March 17. To the Assembly: Transmitting the annual report of the Commissioners of Quarantine, together with the annual report of the Health Officer of the Port of New York.

March 18. To the Assembly:

Veto of a bill entitled "An act to establish Free School District No. 12 in the town of Newtown, Queens county."

"This bill possesses the same characteristics as numerous others from which I have felt compelled to withhold my approval during this session. It is special legislation, and not only special, but unnecessary legislation. It aims to establish a new school district in the town of Newtown, Queens county, and to accomplish this result the whole legislative power of the State is invoked, and this notwithstanding the fact that chapter 555 of the Laws of 1864 has provided a way for the accomplishment of the same end by means of the local school authorities. By this law, the formation and alteration of school districts is left to the discretion of those who are presumed to know best the requirements of their neighborhood, and any possible injustice is provided for by the privilege of appeal to the State Superintendent of Public Instruction.

It can hardly be claimed that either the Assembly or the Senate can have been so well informed as to enable it, with the multitude of other matters engrossing its attention, to come to a more just conclusion than the local school authorities will be able to do.

After giving the merits of the question involved careful consideration, I am of the opinion that no interest will suffer if the general law is applied to Newtown school matters as well as to all the other towns of the State. There seems to be little doubt that a majority of the people of the district desire the change proposed by the bill, and it is probable that such change would be beneficial to the interests of the district. Under these circumstances I am convinced that a proper application to the local authorities will receive just consideration, and that a decision in accordance with the wish of the majority will be arrived at. But I am just as fully convinced that the local authorities, and they alone, are the ones who should make the decision.

There are 11,262 school districts in the State, and to establish any other course of procedure other than that above laid down would encourage action contrary to, and would violate the principle I have not infrequently announced, namely, that matters of great and general consequence, rather than those of local and comparatively trivial importance, should receive the attention of the Legislature. Let local school officers decide local school questions, and let the Legislature fulfill the Constitution by passing general laws, applicable, with rare exceptions to every locality, and to the whole people of the State."

The bill was not passed over the veto.

March 25. To the Assembly: Transmitting the annual financial report of the Comptroller of the Sailors' Snug Harbor.

March 28. To the Senate:

Veto of a bill entitled "An act to fix the compensation of inspectors of election and poll clerks in certain towns in Queens county in the State of New York."

"This bill is special legislation. The general election laws of the State provide the compensation that shall be paid to inspectors of election and poll clerks in the various towns of the State. It seems no great hardship that this rate of compensation should be uniform in all towns throughout the State. In any event, if different rates are deemed necessary, the power to fix them should be lodged by general statute in the boards of supervisors, and legislation for each county, much less for each town, should not be asked for at Albany."

The bill was not passed over the veto.

March 29. To the Assembly:

Veto of a bill entitled "An act to prohibit the sale of intoxicating liquors, ale and beer within one-half mile of the grounds of the Willard Asylum for the Insane."

"This is special legislation. It is not claimed that the bill is for the direct protection of the inmates of the Willard Asylum; its approval is not urged in order to prevent them from obtaining liquor. They are kept within the asylum boundaries. But the alleged reason for this peculiar and unusual special legislation is that some protection is needed for the employés of the institution, who are subjected by one saloon to a temptation which the Legislature is entreated to remove. It appears rather ridiculous that the action of the highest legislative and executive authority should be invoked in such a matter. If an employé of the asylum offends against any reasonable regulation of its officers, it certainly would not seem to be difficult to obtain the services of some one to take his place who would willingly be obedient to all rules.

There can be hardly a question that if the officers of the Willard Asylum should make a request of the towns concerned that no license should be granted within half a mile of the asylum, and show any good or special reason why the discretion to grant or refuse licenses should be thus exercised, that their desire would be regarded. It does not appear, however, that any such request to the local authorities intrusted by general statute with power in such matters has been made. The truth is, it is easier to come to the Legislature at Albany and secure, by special legislation, what is wanted, than to make use of the local machinery already provided.

It would be just as proper for the Legislature to pass a special act prohibiting the board of excise of Albany city from granting any license to sell liquor within half a mile of the Capitol, in order to prevent State officers, members of the Legislature and its employés from being subjected to the temptation of undue indulgence in intoxicating drinks.

Such particular legislation as this in regard to licenses furnishes a bad precedent. The excise laws should be substantially uniform in all parts of the State, and special laws should not be passed discriminating for or against particular localities."

The bill was not passed over the veto.

March 29. To the Assembly:

Veto of a bill entitled "An act to authorize the Oswego County Agricultural Society to execute its mortgage to pay certain indebtedness."

"This bill is special legislation, and seems to be inexpedient, as well as unnecessary. If this society is a corporation organized under the general act for the incorporation of agricultural societies, the bill is unnecessary, for the reason that such general law expressly provides a method for mortgaging such corporate property. If it is a corporation created by a special act, the special act should be amended, which is not proposed by this bill, or a general law should be passed providing for a method of mortgaging the property of that class of corporations. There should not be a special law for every such institution that may desire at any time to incumber its property.

The *status* of this society is a little uncertain, and I am unable to ascertain whether or not it is a corporation at all. If, as I am inclined to believe, it is not a corporation, but a mere voluntary association, as such it has all the liberty of a private partnership in the matter of mortgaging its property.

The bill is also unwise, in seeking to establish a special rule as to the lien of this proposed mortgage. It provides 'from the time of being recorded in the office of the clerk of Oswego county the said mortgage shall be a valid lien,' thus changing, in this particular case, the rule, which is that a mortgage takes effect and is a lien from the time of its execution and delivery, save in certain specified instances.

The bill also contains other provisions which are wholly superfluous."

The bill was not passed over the veto.

March 30. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 30, 1887.

"I deem it my duty to call your attention to the increase of special and local legislation during recent years, and to suggest the propriety of considering some plan for relief.

It is evident that the greater portion of the session of each Legislature is occupied with the consideration of special and local measures having no relation to the State at large, and such consideration involves the exclusion of general measures affecting the people of the whole State.

This evil was recognized and was in part remedied by the adoption of the constitutional amendments of 1874, which prohibited certain private and local legislation which it had theretofore been customary to enact, and expressly empowered the Legislature to frame general laws for such cases, 'and for all other cases which, in its judgment, may be provided for by general laws.'[e]

The salutary effect of these amendments was soon evidenced by the passage of more general and fewer special laws, besides reducing the whole volume of legislation, the number of laws enacted in 1876 being only 448, and in 1878 being only 418, while in 1869 the number had risen to 920, and in 1871 to 946.

But it is quite apparent that the constitutional power vested by these amendments in the Legislature, for the prevention of special and local legislation, has not been exercised as entirely and perfectly as is desirable. The number of laws enacted during the past five years has been steadily increasing, notwithstanding a liberal use of the veto power by the Executive. This fact is shown by the following statement, taken from the Session Laws:

Years.	No. of laws enacted.
1882	410
1883	523
1884	551
1885	557
1886	681

It may be safely asserted that much of this legislation is not absolutely required, or could be avoided by the passage of general laws. There is always danger of too much rather than too little legislation. The difficulty appears to be — and I state it with all due respect to the Legislature — the members are apparently too desirous of obliging their immediate constituents by the procurement of special and local legislation in their behalf, rather than by accomplishing the objects of such legislation by the passage of general laws applicable to the whole State and for the benefit of all the people; and the Executive — anxious to gratify the members as far as he can reasonably do so in the discharge of his official duty — too easily yields his convictions of duty and propriety, and too frequently approves not only unnecessary legislation, but legislation of questionable utility and doubtful benefit.

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[e] Const. 1846, art. 3, § 18, added 1874.

The true remedy lies in the Legislature fully availing itself of the power, which it clearly possesses, to suppress such legislation, by rendering it unnecessary and undesirable, in the perfecting of a series of general laws embracing all subjects usually covered by such enactments.

The present session is more than half over and twenty more laws have been enacted up to this time than at the same period last year, and there are now on the files of the two houses, reported from the various committees, over 1,273 proposed laws, an almost unprecedented number.

Of the ninety-seven laws already enacted, there are only about fifteen of them that can be considered general in their character, and of these five are amendments to the Code.

The important measures of general interest, which were early introduced, do not seem to have made much progress as yet; but it may be assumed that they have been crowded out and retarded by the great pressure of special and local legislation.

It is clear that further general laws should be passed for the organization of corporations as well as laws conferring greater powers upon the local authorities of municipalties and boards of supervisors, providing for uniform tax laws in the various counties and a uniform law of exemption, enlarging the powers of the court for changing the names of corporations and many other laws of like character.

I believe in the principle of home-rule and favor its practical application to all the cities, villages and towns of the State.

They should be permitted to govern themselves in all matters of purely local concern, without the intervention of the Legislature. I can see no propriety in these municipalities applying to the Legislature for authority every time they desire to make a special improvement, or to raise an extra amount of tax, or to create an additional indebtedness, or to issue further bonds.

Whenever it is deemed expedient to open a new street, or to alter a city map, or to erect a new school building, or to construct a sewer, or to pave a street, or to build a bridge, they should have the power to do so, under well-guarded restrictions. No application should be made to the Legislature where it can properly be avoided.

The valuable time of the legislators of our great State should not be occupied with such comparatively unimportant matters, or matters of purely local importance.

The local authorities can as well be trusted for a proper disposition of such questions as the Legislature, because every one familiar with the methods or course of legislation knows that the enactment of local bills is practically left to the discretion of the local representative, and his desires are generally controlling. While in form the bill is deemed to express the wisdom and will of the whole Legislature, in truth and in fact its provisions usually only express the wishes of the immediate representative of the locality interested.

All of such matters can more safely be remitted to the local authorities, and the time of the Legislature can better be occupied in the consideration of important general measures, now too much neglected.

Hon. David Dudley Field, in his recent admirable address before the State Bar Association, stated that each statute enacted last year cost the State the sum of $734; and it appears from an inspection of the Session Laws that of the 681 laws of last year there were only 249 that can properly be considered of a general character.

A wise economy will be promoted, as well as the best interests of the State subserved, by an earnest effort to diminish the number of superfluous laws. Instead of constantly amending the charters of our cities or passing special enactments conferring temporary powers whenever any extra authority is desired, there should be a general statute passed providing for such cases, with ample safeguards surrounding the authorization.

The special legislation concerning the city of Rochester furnishes a fair illustration of this point. Almost every year since the revision of its charter in 1880, special acts have been passed authorizing the common council to levy amounts to build school-houses in addition to that allowed by its charter for school-building purposes, viz.:

Years:	Chapters:	Amount authorized:
1881	Chapter 72	$17,500
1882	Chapter 69	18,000
1883	Chapter 351	15,000
1884	Chapter 213	42,500
1886	Chapter 190	20,000

Another act has been passed by the present Legislature authorizing a further levy of $55,000 for additional school buildings, and, while deploring such a system of legislation, I have permitted the same to become a law without my signature.

There is also a certain village in the State which applies to the Legislature for a special law every time it desires to build a new sewer or to make any other improvement; and the member who represents that district very frankly asserts to me that the people of the village prefer to be governed from Albany rather than at home. The system must be regarded as a pernicious one, however, and should not be continued.

Twenty-two special acts relating to Albany city and its affairs were passed by the last Legislature. Other cities have almost an equal unenviable record.

While uniform city charters may not be feasible, certain general additional powers of local legislation may appropriately be conferred, which will very greatly dispense with any pretended necessity for frequent legislative interference. So long as special legislation is easily procured and readily approved, just so long will there be a delay in any reform in this matter.

The system or abuse of special legislation is the growth of years and has been occasioned by the absence of general laws covering the subjects upon which legislation is desired.

The evil cannot be immediately remedied, and certainly not by the passage of hastily-conceived or ill-digested measures, but only by a series of carefully-prepared and well-considered general laws, which cannot readily or conveniently be framed by members themselves during a busy legislative session.

I, therefore, desire to suggest for your consideration the propriety of the passage of an act authorizing the appointment of a commission of three persons, familiar with the law and with legislative proceedings, to prepare and submit to the next Legislature a series of general laws upon such subjects as may be specified in the act, or as the commissioners may deem proper and expedient.*

DAVID B. HILL."

April 4. To the Assembly:

Veto of a bill entitled "An act to provide for the construction of sewers and drains in the village of Canandaigua, and repealing section three of chapter four hundred and seven of the Laws of eighteen hundred and seventy-six, entitled 'An act to extend the powers of the trustees of the village of Canandaigua.'"[22]

"This bill is unnecessary, contains substantial defects, and is not free from clerical errors.

The purpose of the bill is to authorize the village of Canandaigua to construct such sewers within the village 'as they shall regard necessary for the preservation of the public health,' and to condemn lands necessary therefor. The trustees of this village already have more ample powers in this respect by Chapter 407 of the Laws of 1876, as amended by subsequent legislation, than is conferred by the general act upon villages incorporated thereunder. This bill proposes no change in the main features of the act of 1876, but only amplifies the procedure already provided, with more than usual fullness, by that act. By repealing only section three of the act of 1876, and leaving section one thereof in force, this bill, if it should become a law, would create uncertainty in the interpretation of the final clause of section one of the act of 1876, and would require the construction of two independent statutes for the same object, always a source of confusion, and a vicious method of legislation.

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* This suggestion was substantially embodied in the act of 1889, chapter. 289, creating a statutory revision commission with authority to prepare and report a series of general laws. A large number of general laws were passed from time to time as a result of the work of this commission.

[22] This bill was not passed over the veto, but another act was passed which became chapter 266 on the 3d of May, and which amended the act of 1876, chap. 407, extending the powers of the trustees of the village of Canandaigua relative to the construction of sewers.

The most serious objection to the substance of this bill runs through sections five to eight, inclusive, requiring the trustees of the village, forthwith, upon the determination of the amount of damages for lands taken, to estimate the probable expense of constructing a proposed sewer. Upon the basis of this probable estimate, damages and benefits are to be appraised, and the entire estimated expense of the sewer is to be levied and collected of the adjoining property-owners at once, without necessarily waiting either for the commencement or completion of the sewer. No provision is made for any adjustment of the variation between the estimated expense thus levied and collected, and the actual expense as finally ascertained after the completion of the sewer. If the adjoining property-owners shall have paid more than the actual cost of the sewer, no provision is made for reimbursing them. If, on the other hand, the amount collected be less than the actual cost, no provision is made for supplying the deficiency.

Among the more serious clerical errors contained in the bill are the following: Both the title and section 12 of the bill misquote the title of the act of 1876; the twentieth line of the seventh section of this bill reads, that the commissioners shall make such amendments as 'they *may shall* think just;' the second line of the eleventh section reads: 'In case the trustees of said village *have or are able* to acquire by agreement.'

If on a more thorough examination of the act of 1876 than it is fair to presume the Legislature have yet given thereto, any variations therefrom are deemed necessary, such variations should be embodied in an entirely new bill containing carefully-prepared amendments to that act."

April 6. To the Assembly:

Veto of a bill entitled "An act to authorize the department of public parks to alter and amend a part of the map of the city of New York in the twenty-fourth ward," also a bill entitled "An act to authorize the department of public parks to alter and amend a part of the map of the twenty-third ward of the city of New York."

"The same reasons hold against both these special bills, and as well against the large number of like special bills changing the map of the twenty-third and twenty-fourth wards of the city of New York, which are now pending in the Legislature.

While these bills are permissive in form, they constitute a very objectionable species of legislation. The mere fact of their passage is invariably urged upon the department of public parks as an indication of the will of the Legislature, and as constituting a kind of moral, if not legal, mandate upon the commissioners.

That the power should be vested somewhere to change the map or plan of this portion of the city is unquestioned. The large area, formerly constituting a portion of Westchester county, and annexed to the city of New York in 1873, was laid out and mapped a number of years ago by the then park commissioners according to the best judgment they could then form as to the probable needs of that portion of the city in the future. In many cases conditions have changed so that it is desirable that alterations of plan should be made, and this has resulted, in the present and in former years, in the introduction of special bills to effect such changes. It seems to be so clear as to hardly need argument and demonstration that the interests of all concerned can be best conserved by the passage of a general law conferring upon some local authority, either the park department or the board of street opening and improvement, this general power subject to such reasonable restrictions, and with such provisions for public hearings as the Legislature may see fit to prescribe; or if it is deemed wise that neither these nor any other of the already constituted boards of New York city should have the power to change such maps, a new board for that special purpose could be established. Such acts as those first mentioned have been prepared and introduced in the Legislature, at the instance of the department of public parks, for several years, but have thus far failed to be enacted, and seem likely to meet with effectual opposition until it is found that relief must be obtained by a general act, or not at all.

A general act giving authority for the changes proposed in these bills returned without approval is now before the Legislature, and I respectfully commend the same to the consideration of your honorable body. Special legislation, where a general law can be enacted, is just as objectionable for the city of New York as for other portions of the State."

The bills were not passed over the veto.

April 12. To the Assembly:

Veto of a bill entitled "An act to prohibit the sale of intoxicating liquors in any building or upon any premises belonging to the State of New York."

"In my first annual message I respectfully recommended to the Legislature the appointment of a competent and experienced counsel to aid the Legislature in the framing of bills. I have since reiterated such recommendation, but thus far the Legislature has paid no attention to the suggestion.

There are very many able lawyers in the Legislature, but in the hurry of legislative business they have little time to devote to the preparation or examination of bills other than their own.

The history and objects of the legislation sought to be accomplished by this bill would seem to demonstrate the propriety of the selection of some able counsel to supervise proposed legislation.

A year ago, for the accommodation of members, a restaurant was established in the Capitol, and it was claimed then, and is still claimed by some people, that liquors are sold at such restaurant. The proprietor of the restaurant denies the charge, and, besides, he has no license for such purpose from the board of excise of Albany city, or any permission from the trustees of public buildings. If he sells at all, he sells in violation of law. It would not seem to be necessary to enact another law to prevent his doing what he has already no right to do, and commits a crime in doing.

In the attempt to do an unnecessary thing last year, the Legislature passed an act forbidding any person to sell or ' give away ' any intoxicating liquors in any building belonging to the State, and making the violation of the act a misdemeanor and subjecting the offender to ' summary removal ' from any such building.

The bill was thus altogether too broad. It would have prevented the Executive from giving a glass of wine or ale to any guest at the Executive Mansion, and prevented a like courtesy on the part of the superintendent or officers of any of the public institutions of the State, where they reside in any building belonging to the State. The officers of the Soldiers' Home protested against the bill, and I withheld my approval from it.

This year the present bill has been passed. It is equally as objectionable as the one of last year.

If the sole object desired to be accomplished is to prevent the sale of liquors in the Capitol, and it is deemed desirable to have further legislation, then the proper way is to amend the general excise law of the State by providing that no licenses whatever shall be granted by any board of excise to sell liquors in any building belonging to the State excepting the State Soldiers and Sailors'

Home at Bath, if it is deemed wise to make that an exception. No independent or separate act is necessary.

The proposed bill is bad in form. All the provisions relating to excise matters should be in one general act, and that general act should be amended if any thing further is desired. It is an easy and simple method, and readily accomplished. Besides, it may be suggested that it is wholly superfluous to pass another law to stop sales which are already in violation of law. If no one sees fit to enforce existing law, of what avail would another be?

In addition to these grounds, there seems to have been a studied effort to make the bill objectionable. In addition to providing that no license shall be granted to sell intoxicating liquors in any building belonging to the State, it unadvisedly goes further and prohibits the selling in such building of "any compound containing alcohol for use as a beverage." This is an unnecessary and troublesome provision. It would prevent the sale of several recognized temperance drinks.

The annexed appendix (copy) from Willis G. Tucker, analyst of the State Board of Health, shows what the effect of this kind of legislation would be.

Under these circumstances, I am compelled to withhold my approval from this measure."

APPENDIX.

Memoranda.— First. Every beverage, whatever its name, that in its preparation undergoes vinous fermentation, contains alcohol. Second. The potential proportion of alcohol in any such beverage is measured by the percentage of sugar it contains; for alcohol is made from sugar, by means of yeast, which splits up sugar into alcohol and carbonic acid. Third. This, therefore, includes lemonade, ginger beer, root beer, ginger ale, when fermented, cider, weiss beer, and some vinegars.

Lemonade.— In regard to lemonade, Hassall, in his work on Food and its Adulterations, page 663, says: "This beverage should consist of the juice of the *lemon,* a certain amount of the peel to flavor it, *white sugar* and *water* in certain proportions, the whole being subjected to fermentation by the addition of a little yeast. Thus prepared, lemonade is really an alcoholic beverage."

Ginger Beer.— Again, on page 664, in regard to ginger beer, he says: "Ginger beer — that is to say, the bottled and effervescent beverage commonly known as ginger beer — should be prepared on the same principle as lemonade; the genuine article should not contain any thing but *ginger, white sugar* and *water,* the mixture being subjected in the same manner as lemonade to fermentation.

Cider.— Cider is defined to be "the fermented juice of the apple," and to contain from five to ten per cent. of alcohol. (Ibid.) Kensington gives the following analysis of cider: water, 94.21; alcohol, 4.17; grape sugar, .35; dextrine, .51; albuminous compounds, .02; acid, .54; mineral matter, .20. Total, 100.

Vinegar.— According to Blyth's Manual of Practical Chemistry, commercial vinegar is a more or less impure acetic acid, containing usually acetic acid, acetic ether, alcohol, sugar, etc.

WILLIS G. TUCKER,
Analyst, State Board of Health.

The bill was not passed over the veto.

April 12. To the Assembly:

Veto of a bill entitled "An act to legalize the official acts of William J. McCollum and Daniel McCleary, as excise commissioners of the town of Salem, Washington county, for the year eighteen hundred and eighty-six."

"This proposed act conflicts with the principles enunciated in two previous vetoes of bills legalizing the acts of public officials. If officials will persist in neglecting their duties by failing to file the official bonds required by law, they must accept the consequences of their acts.

It seems that the commissioners of excise of the town of Salem who were elected in 1886 failed to file their official bonds, and by reason thereof other officials were this year elected to take their places, and such newly-elected officials are now assuming to act as the legal excise commissioners of the town of Salem. Whether a vacancy was actually created by the failure to file the bonds is a question which should not be decided by the Legislature, but by the courts. It is a sufficient objection to this bill that there are adverse claimants to the same offices, and the Legislature should not step in and aid some at the expense of others. The bill contains no saving clause, and does not except any suits pending or the rights of parties interested. The legislation looks like an attempt to settle disputed claims to office, and it cannot be sanctioned.

The bill was not passed over the veto.

April 12. To the Assembly:

Veto of a bill entitled "An act to further amend chapter one hundred and seventy-five of the Laws of eighteen hundred and seventy, entitled 'An act regulating the sale of intoxicating liquors.'"

"There are two fatal objections to this bill, which render its approval impossible.

First. Its provisions, so far as they change existing excise laws, are only made applicable to the cities of New York and Brooklyn. All the other cities of the State are exempted from these provisions. The bill is thus rendered most objectionable, and this was not done inadvertently, but deliberately and intentionally. That intent was most clearly manifested when, on the third reading of the bill in the Assembly, it was amended for the avowed purpose of rendering it certain that its provisions should not by any possibility apply to any other city in the State besides New York and Brooklyn.

If the provisions of the bill were regarded as beneficial and not injurious, and were really intended or expected to promote the cause of temperance, it is difficult to discover a valid reason for the anxiety to maintain this discrimination. Besides, the record shows that an amendment was offered in both houses applying the provisions of the bill to all the cities of the State, and another applying them to several of the principal interior cities, but each of these amendments was unhesitatingly rejected by substantially the same vote that passed the bill.

This discrimination was not made at the request of the immediate representatives of these two cities in the Legislature, but, on the contrary, it was adopted against the protest of nine-tenths of them, and was imposed upon these two cities by representatives who refused to accept its alleged beneficent provisions for, or in behalf of, their own localities. The question is presented whether legislation procured under such circumstances, which is apparently so partial, inconsistent and disingenuous, should be permitted to ripen into law.

Samuel J. Tilden was elected Governor of this State in 1874, by more than fifty thousand majority, upon a platform which expressly declared in favor of '*uniform* and equitable excise laws.' For many years this has been the controlling and settled policy of the State. Licenses have heretofore been regulated by a general law, substantially alike in all essential particulars in its application to every part of the State. But, by the terms of the proposed law, certain acts, which are perfectly lawful in the interior, are made crimes in the cities of New York and Brooklyn. For all other cities, the maximum, as well as the minimum, license fee is prescribed by statute; but, by the peculiar provisions of this act, only the *minimum* fee is fixed for New York and Brooklyn. It thus appears that the keeper of a restaurant in cities other than New York and Brooklyn may procure an ale and beer license, and may at the same time lawfully ' keep on hand ' intoxicating liquors, while in these two cities the same act constitutes a crime and forfeits his license, and while in other cities he must pay for his liquor license a sum ' not less than thirty nor more than two hundred and fifty dollars,' in these cities he must not pay less than one thousand, and as much more as the board of excise in its discretion, whim or caprice may see fit to charge, and this, irrespective of the amount or extent of the business carried on by him. These distinctions do not seem to be based upon any intelligent, just or equitable considerations, and are utterly indefensible.

The excise law, like every other law of the State, should be fair and reasonable in its provisions. It should be substantially uniform throughout the State. This does not require that in all its minor details it should be the same in the country as in the great cosmopolitan cities of New York and Brooklyn, but it does mean that in these cities its restrictive provisions should certainly be as broad and liberal as those which apply to the country — its penal provisions should be uniform, and in all its essential characteristics it should be applicable to all parts of the State alike.

But this bill imposes an unequal burden on the citizens of the State. Equality — equality of right and privilege, of benefit and burden, is the cardinal doctrine of Democracy — the fundamental principle of Republican philosophy. The burden imposed by the bill, though in name a license fee, is really a tax.

' The exaction of a license fee, with a view to revenue, is an exercise of the power of taxation.' (Cooley on Const. Lim., 201, note 4.)

The burden being unequal, the bill is intrinsically unjust. No good reason exists why a heavier exaction should be imposed upon the saloon keeper in New York than upon the saloon keeper in Buffalo. It cannot be pretended that the business of the former can necessarily bear a heavier burden than that of the latter; nor is drunkenness a greater evil in New York than in Buffalo. Suppose a higher license fee were exacted of the lawyer, physician, merchant or plumber in Buffalo than in New York, would not all admit the inequality of the burden? If the measure be an evil, New York and Brooklyn should not alone be afflicted with it; if it be a benefit, New York and Brooklyn should not monopolize its advantages.

As before stated, a license fee is a tax imposed by the State, and, like every other tax, it should be just and equal in its operation. No partial legislation, no partial taxation, should be tolerated in our State. A license fee applicable to the whole State, and based upon the amount of business done, and graded proportionately, would not be open to the criticisms here suggested. A general statute fixing a reasonable minimum license fee to be charged in every city, and even in every town and village in the State, leaving the maximum sum to be determined by the local authorities everywhere, if not entirely satisfactory, would at least be free from the charge of favoritism and hypocrisy in its enactment. The United States liquor license fee is uniform throughout the State; the collateral inheritance special tax is the same in the cities of New York and Brooklyn as elsewhere; the regulations and penalties concerning the sale of oleomargarine are similar everywhere in the State; the laws in regard to adulterated food apply to those cities with no greater severity than anywhere else. The truth is that no tangible or consistent argument whatever has been advanced why the unjust discrimination contemplated by this bill in respect to these two cities should be countenanced for a moment.

If the number of licensed places in those cities was very much greater than in the other cities of the State in proportion to the number of their inhabitants, there might be some plausible pretext or excuse for the exemption of the latter cities. But such is not the fact. On the contrary, the very reverse is the truth.

I have procured an accurate and official statement from the boards of excise in every city in the State, showing the number of licenses now in force in such cities, and the fact is established that of the cities of the State, (there being twenty-seven in all) in twenty of them the number of licenses therein is greater in proportion to the population than in the city of New York, and in all but one of them the number is greater in proportion to the population than in the city of Brooklyn. It is thus apparent that there is less necessity for legislative interference with, or legislative discrimination against, the cities of New York and Brooklyn, than for almost any other part of the State.

The following is a statement of the cities of the State — their population taken from the last census (1880),— the number of licenses now in force in each city,— and the number of licensed places to each thousand of inhabitants.

CITY.	Population, 1880.	No. of licenses.	No. of licenses per 1,000 of population.
Buffalo	155,134	2,133	13.75
Utica	33,914	432	12.74
Long Island City	17,129	201	11.73
Syracuse	51,792	602	11.63
Hudson	8,670	99	11.42
Dunkirk	7,248	77	10.62
Troy	56,747	574	10.11
Albany	90,758	902	9.94
Newburgh	18,049	178	9.86
Elmira	20,541	197	9.59
Yonkers	18,892	179	9.47
Schenectady	13,655	128	9.40
Lockport	13,522	122	9.02
Rochester	89,366	796	8.91
Rome	12,194	107	8.77
Kingston	18,344	160	8.72
Cohoes	19,416	165	8.50
Oswego	21,116	170	8.05
Binghamton	17,317	135	7.80
Auburn	21,924	160	7.30
New York	1,206,299	8,765	7.27
Poughkeepsie	20,207	143	7.07
Amsterdam	11,710	80	6.83
Ogdensburg	10,341	56	5.42
Watertown	10,697	57	5.33
Brooklyn	566,663	3,012	5.32
Jamestown	10,842	36	3.32

The towns and villages of the State make even a more favorable showing for New York and Brooklyn. By the following table it appears that out of twenty-three towns and villages situated in various parts of the State, and fairly illustrating the whole State, there are fourteen villages having a greater number of licenses, in proportion to their population, than New York, and that in none of the twenty-three is there a less number proportionately than in Brooklyn.

VILLAGE OR TOWN.	Population, 1880.	No. of licenses.	No. of licenses per 1,000 of population.
Wallkill	11,486	65	5.66
Fishkill	10,732	65	6.06
Hempstead	2,521	16	6.35
Seneca Falls	5,880	38	6.46
New Brighton	12,679	83	6.55
Flushing	6,683	44	6.59
Cortland	12,664	84	6.63
Port Jervis	8,678	61	7.03
Ithaca	9,105	66	7.25
Cazenovia	1,918	14	7.29
Saugerties	3,923	29	7.39
Hornellsville	8,195	61	7.44
Jamaica	3,922	32	8.16
Lyons	3,820	32	8.38
Coxsackie	1,661	14	8.43
Green Island	4,160	40	9.62
Catskill	4,320	42	9.72
Geneva	5,878	60	10.21
Batavia	4,845	51	10.53
Corning	4,802	54	11.25
Fonda	944	14	14.83
Saratoga Springs	8,421	150	17.81
Olean	3,036	60	19.76
Brooklyn	566,663	3,012	5.32
New York	1,206,299	8,765	7.27

Those who voted for the passage of this bill in the Legislature must have acted in ignorance of these facts, or else, in the commendable desire on their part to relieve New York and Brooklyn from the evils arising from the great number of licensed places therein, must have overlooked the greater danger at their own homes, and will appreciate the opportunity now afforded for further and more careful consideration of the subject.

Second. The second objection to this measure is that a portion of its provisions are clearly unconstitutional.

It appears that upon the third reading of the bill in the Assembly there was hastily, and without deliberation or previous reflection, added thereto the following clause:

'If any person, having a license of the second or fourth class, shall keep on hand on the premises licensed, any intoxicating liquors other than those permitted in his license, he shall be guilty of a misdemeanor, and his license shall be forfeited.'

This clause is not only seriously defective in not providing any method or manner of forfeiting the license or adjudicating the forfeiture, or judicially determining the guilt of the alleged offender, but assuming to act as judge, jury and executioner, it declares the party guilty, and forfeits his license without any further proceedings either by or against him. The decision of our highest court is, that this cannot be done. Commissioners of Excise *vs.* Merchant, 103 N. Y. 149. But it is also more than defective in form — it conflicts with the organic law of the State.

Liquors are recognized as property under our present Constitution, and by the decisions of the courts. Their sale may be regulated and restricted, but it cannot be prohibited; they cannot be confiscated. What cannot be done directly cannot be done indirectly or by evasion. Yet this provision makes the mere 'keeping on hand' of liquors — without any sale or intention to sell — a crime. This is a destruction of property or interference with its vested rights that is repugnant to the Constitution.[f]

If this provision can be upheld, it would prevent the proprietor of a respectable restaurant from keeping in his establishment a bottle of brandy, even for his own family use. It would seem to be a preposterous provision, ill-conceived and badly framed.

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[f] U. S. Const. art. 1, § 10, clause 1.

I am advised by the law officer of the State — the learned Attorney-General — that this portion of the bill is unconstitutional. His opinion is concurred in by ex-Judge George F. Comstock, of Syracuse, one of the ablest and most distinguished jurists of the State. Their opinions are hereto annexed, and I am bound to accept them as conclusive of the questions involved.

I need hardly add that I cannot be expected to approve a measure that, in any particular, violates the Constitution.

Upon these two grounds before stated I distinctly place my objections to this measure. It is unnecessary to examine any others that may exist. The bill may or may not be satisfactory in other respects, but I am not called upon now to consider that question. It is sufficient for present purposes that there are at least two insuperable and conclusive objections to its approval, and beyond that it is not my duty to inquire. Upon the propriety of 'high license,' so-called, I express no opinion.

I am not unmindful of the fact that there are many well-meaning people, with the best interests of the community at heart, having no accurate information as to the details of the bill, but influenced by the general statement, diligently and loudly proclaimed, that it is a reform measure, having for its sole purpose the decreasing of the number of licensed places, and a diminution of the evils of intemperance, by simply raising the money value or price of licenses, and who have unwittingly been led into the support of this bill; and there are pronounced temperance people who, apparently fickle in their opinions, have abandoned their previous efforts for prohibition, and latterly have come to believe, or who affect to believe, that the imposition of higher license rates would be more beneficial than prohibition; while, on the other hand, that other earnest, sincere, consistent and numerous class, known as prohibitionists, are honestly and boldly opposed to this bill, upon the ground that they object to all licenses and all compromise measures, and believe that there is no adequate remedy for the evils complained of except entire prohibition.

Neither should it be forgotten that there is a large element of our population — citizens of German extraction — peaceable, law-abiding and industrious people, who have done much to build up our country and increase its prosperity, and whose customs and habits seem to require liberal regulations concerning license, and who are naturally opposed to all severe sumptuary laws. But whatever differences of opinion may exist among various classes upon the propriety of that kind of legislation which seeks to check intemperance by only raising the price of licenses, without any other restrictions or additional safeguards, and concerning which I do not now propose to state any views of my own, there can certainly be no serious dispute among thoughtful people that whatever law is enacted should not violate the Constitution, and that it should be equal and uniform in its operation.

While the question of temperance is not a party question, and cannot well be made such, yet it is impossible to ignore the political aspects of the measure, especially where it is well known that its support was made the subject of consideration at a party caucus of the majority of the Legislature, and where it has been ingeniously devised and peculiarly framed so as to operate solely upon the two great Democratic constituencies of the State, while Republican cities and constituencies are exempted from its burden.

The words of Governor Horatio Seymour, in a message to the Senate, as early as 1854, at a time of considerable excitement in regard to temperance legislation, concerning a bill from which he withheld his approval — a bill equally as unconstitutional and unwise as the one which I am now considering — are peculiarly applicable, and I concur substantially in the sentiments then so well expressed. He said:*

'Judicious legislation may correct abuses in the manufacture, sale or use of intoxicating liquors; it can do no more. All experience shows that temperance, like other virtues, is not produced by law-makers, but by the influence of education, morality and religion.

'While a conscientious discharge of duty, and a belief that explicit language is due to the friends of this bill, require me to state my objections to the measure in decided terms, it must not be understood that I am indifferent to the evils of intemperance, or wanting in respect or sympathy for those who are engaged in their suppression. I regard intemperance as a fruitful source of degradation and misery. I look with no favor upon the habits or practices which have produced the crime and suffering which are constantly forced upon my attention in the painful discharge of official duties. * * * Men may be persuaded — they cannot be compelled to adopt habits of temperance.

'I concur with many of the earnest and devoted friends of temperance in the opinion that it will hereafter be a cause of regret if the interest, which is now excited in the public mind upon that subject, should be diverted from its proper channels and exhausted in attempts to procure legislation, which must be fruitless.'

As the chosen Executive of over five millions of people, I am not unmindful of the duties and obligations which attach to the consideration of this question. I am not unaware of, nor do I in the least ignore, the interest that is felt therein. I would encourage and increase that interest. Agitation will, in the end, secure beneficial results. The evils of intemperance are not hid in a corner; they cannot be concealed; to all they are patent, and to none more patent than to those who, as public servants, have to deal in any degree with the criminal law. It is not and it cannot be denied, that society is injured, that the State receives harm, that the character of a people is debased by the excessive, misguided and undiscriminating use of intoxicants. These evils exist in country and in town; these injuries touch both rich and poor. Whatever measures to promote sobriety and good morals may be deemed wise and proper, they should be applied wherever the evil aimed at exists; applied alike to rich and poor, alike to country and to city. Such laws should be no respecters of persons or of localities.

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* *Ante*, vol. 4, p. 770.

Measures designed to check intemperance, to restrain its evils, to abate its injurious effects, and to correct the abuses resulting from it, are assuredly legitimate subjects for consideration by the highest authorities — legislative and executive — of the State. In the enactment of laws — just and equal in their application to all the citizens of the State — to promote such ends the Legislature will never fail to have my earnest and sincere co-operation. But legislation which, while assuming to be prompted by a desire to promote the public welfare, discovers itself as in reality devised to serve a partisan purpose — narrow, selfish, un-American — cannot be expected to receive Executive sanction."

"APPENDIX No. 1.

OPINION OF THE ATTORNEY-GENERAL.

STATE OF NEW YORK:

ATTORNEY-GENERAL'S OFFICE,
ALBANY, *April* 8, 1887.

To the Governor of the State of New York:

DEAR SIR.—At your request I have examined the bill recently passed by the Legislature, entitled 'An act to further amend chapter one hundred and seventy-five of the

Laws of eighteen hundred and seventy, entitled "An act regulating the sale of intoxicating liquors."'

There is one provision of this bill which, in my opinion, invades the property rights of the citizen, and is, therefore, in conflict with both the spirit and the letter of the Federal and State Constitutions. The language of the provision to which I refer is as follows: 'If any person having a license of the second or fourth class shall keep on hand, on the premises licensed, any intoxicating liquors. other than those permitted in his license, he shall be guilty of a misdemeanor, and his license shall be forfeited.'

The bill provides that, in cities containing more than four hundred thousand inhabitants, there shall be five classes of licenses. The *second* class includes only licenses to sell malt liquors and wines to be drank on the premises. The *fourth* class authorizes the sale only of malt liquors and wines *not* to be drank on the premises. These provisions are the only ones necessary now to refer to, in order to show the general bearing of the objectionable provision.

It will be seen that the provision to which I have first referred makes it a criminal offense to keep on hand upon the premises licensed any intoxicating liquors other than those permitted in the license, *for any purpose whatever.* It is not a prohibition simply against keeping such liquors with an intent to sell the same or to violate the law; nor does it apply exclusively to liquors obtained by the party after the passage of the act, but in its broad provisions includes liquors which he owned and had in his possession before the enactment of the proposed legislation.

It cannot be denied that the Legislature has the power to regulate the sale of intoxicating liquors; but it is just as clear that it has not the power to legislate against their existence.

It is now, I suppose, universally admitted, and must be conceded, that intoxicating liquors, to be used as a beverage, are *property* in the most absolute and unqualified sense of the term, and as such, as much entitled to the protection of the Constitution as lands and houses, or chattels of any description whatever. Wynehamer *vs.* The People. 13 N. Y. 378.

The Constitution of this State provides, in article 1, section 1, that 'no member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizens thereof, unless by the law of the land or the judgment of his peers.'

Section 6 of article 1 provides that 'no person shall be deprived of life, liberty or property without due process of law.'

And the fourteenth amendment to the Constitution of the United States provides that 'no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

Under the provisions of the bill, as has been before stated, a license of the second class permits the person holding it to sell only malt liquors and wines to be drank on the premises. A license of the fourth class permits the person obtaining it to sell only malt liquors and wine *not* to be drank on the premises. The prohibitory and penal provision before referred to makes it a criminal offense, indictable and punishable, for a person having a license to sell wine and beer to be drank on the premises, to keep on hand, on the premises licensed, any other intoxicating liquors. That is to say, any brandy, whisky, rum or gin, without regard to the purpose of its use or to the circumstances under which it came into, or is in his possession. If any thing but wine or beer is found upon the premises licensed he is guilty of a misdemeanor.

The objection to this legislation will be easily perceived by inquiring what, under this law, is the condition of a person having spirituous liquors on hand at the time of its passage. Suppose that a citizen of New York or Brooklyn, upon the day when this law takes effect, has in his possession not only wine and beer but also whisky, brandy or gin. He may have been engaged for a long time before the passage of the law in the sale of all these articles. But he obtains, after the passage of the act, a license of the second class; that is, a license to sell wine and beer only. But he allows the brandy, whisky or gin to remain in his place of business, as before. He has no license to sell it and he may have no intention to sell it, but in order to save himself from this penal provision he must destroy it, sell it or get rid of it in some way. He cannot allow it to remain upon the premises licensed.

If a person is the owner of property he may, under the law, keep it in some convenient place, and the Constitution, in my judgment, protects him in the right to keep spirituous liquors for safe-keeping, storage or convenience, upon the premises licensed to sell beer and wine only. An attempt to deprive him of the right to keep this property on his own premises is a practical denial of his ownership. He may take out a license to sell malt liquors and wines under the regulations prescribed by law, but the fact that he has taken out a license under the law to regulate the sale of one thing cannot interfere with his right to hold and keep other property. As I have before suggested, the guilt of a party under this law does not depend upon his keeping spirituous liquors upon premises licensed to sell beer and wine only when such keeping is with intent to sell or to violate the law. His keeping it on hand on the licensed premises may be ever so innocent, may be in fact necessary in order to preserve his property, but under this law he would still be liable to indictment and punishment.

I do not think it is within the power of the Legislature to pass a law subjecting the citizen to criminal liability for such an act. It has no power to pass a law making it a misdemeanor for a person who owns and is in possession of spirituous liquors, at the time of the passage of this act, to hold, own and keep the same upon his premises, though he should apply for and obtain a license to sell malt liquors only.

From an inspection of the printed bill it is apparent that the provision which I have been considering was not a part of the original scheme of legislation. It was inserted, I assume, by amendment, when the original bill was in progress through the Legislature, and when read in connection with the provision to which it was added, a singularly contradictory and incongruous result is produced. This will be seen by quoting the new and the original provisions as they now appear in the bill, which is in the following language: 'Persons not licensed may keep and in quantities not less than five gallons at a time, sell and dispose of strong and spirituous liquors, wines, ale and beer, provided that no part thereof shall be drank or used in the building, garden or inclosure communicating with, or in any public street or place contiguous to, the building in which the same be so kept, disposed of or sold. If any person having a license of the second or fourth class shall keep on hand on the premises licensed any intoxicating liquors, other than those permitted in his license, he shall be guilty of a misdemeanor and his license shall be forfeited.'

The first clause of this provision seems to permit a person, not having a general liquor license, but having a wine and beer license, to keep and sell in quantities not less than five gallons at a time spirituous liquors, while the last clause makes it a misdemeanor for him to keep such liquors on hand on the premises licensed.

The two clauses united would constitute a criminal enactment exceedingly unsafe and obscure when the liberty of a citizen is involved. This feature of the proposed legislation should not be overlooked while considering the graver constitutional objections that I have mentioned.

Very respectfully,
Your obedient servant,
D. O'BRIEN,
Attorney-General."

APPENDIX No. 2.

OPINION OF THE HON. GEORGE F. COMSTOCK, EX-JUDGE OF THE COURT OF APPEALS.

At the request of parties interested, I have examined the act, recently passed by the Legislature, amending an act passed in 1870, entitled "An act regulating the sale of intoxicating liquors." My opinion is asked as to the constitutionality of the last clause of the last section, which is in the following words:

"If any person having a license of the second or fourth class shall keep on hand, on the premises licensed, any intoxicating liquors other than those permitted in his license, he shall be guilty of a misdemeanor, and his license shall be forfeited."

This act provides that in cities containing more than four hundred thousand inhabitants there shall be five classes of licenses. The *second* class includes only licenses to sell malt liquors and wines to be drank on the premises; the *fourth* class, only malt liquors and wines *not* to be drank on the premises. For the purpose now in view it is unnecessary to refer to other portions of the act. It will be seen that the prohibition in the above penal clause is against *keeping* any liquors except malt liquors and wines.

The Legislature has unquestionably the right to regulate the sale of intoxicating liquors, but not to legislate plainly and palpably against their *existence as property.*

All property is placed under the same constitutional protection. In the case of Wynehamer *vs.* The People, reported in the 13th of the New York Reports, a severely prohibitory law came before the Court of Appeals for its consideration, and the act was adjudged to be unconstitutional. As a member of the court at that time, it became my duty to render an opinion, which I did at considerable length, and with the care which so important a subject demanded. I have not changed my views, and, without repeating, refer to them now.

I do not see how the clause above quoted in "The High License Act," as it is called, can be sustained. It makes it a criminal offense, indictable and punishable, for a person, having a license to keep and sell *malt liquors and wines,* to own, or keep at all, brandies and other liquors than beer and wines. This seems to me prohibition under a thin disguise. If a person owns property he may certainly keep it in some convenient place; and the denial of the right to keep it on his own premises is a practical denial of his ownership. He may take out a license and sell malt liquors and wines under regulations prescribed by law, but I am not able to see how the taking out of a license to regulate the sale of one thing can interfere with his right to hold and keep other property.

GEORGE F. COMSTOCK.

April 9, 1887.

The bill was not passed over the veto.

April 19. To the Assembly:

Veto of a bill entitled "An act for the relief of towns bonded in aid of the New York and Oswego Midland, and the Syracuse and Northern railroads, and the Pittsburgh, Lackawanna and North Eastern Railroad Company."

"By the provisions of the Revised Statutes, as amended by chapter 315 of the Laws of 1886, and as now in force, when the line between two towns divides a farm or lot, the same shall be taxed, if occupied, in the town where the occupant resides; if unoccupied, each part shall be assessed in the town where the same shall lie.

This bill proposes to change such system of taxation and assessment, in special towns, for a specified period, so that in such towns during such period real estate, whether occupied or unoccupied, shall be assessed and taxed in the town where the same shall lie; and after the expiration of such period such towns are to return to the present system.

The towns selected for the operation of this special legislation are the several towns in this State bonded to aid in the construction of three specified railroads, to-wit: the New York and Oswego Midland, the Syracuse and Northern, and the Pittsburgh, Lackawanna and North Eastern. The period selected for the duration of this special legislation is until such bonds shall be paid.

If the present system of assessing occupied farms and lots intersected by town lines is inequitable, it is evident that such inequities will be felt more forcibly in the towns which are now paying their railroad bonds. But if the present system is just and fair for raising the lighter taxes for ordinary expenses, it is proportionately just and fair for raising the heavier taxes of bonded towns. If the experience of the bonded towns has served to call attention to any injustice in the present system, then the present system should be amended by general legislation.

If this bill would be a benefit to the special towns selected for its application, such benefit can more properly be gained by a general law securing to every town in the State its due proportion of any advantage to be derived from a more just and equitable system."

The bill was not passed over the veto.

April 25. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *April* 22, 1887.

"The Constitution and laws of the State impose upon the Executive the duty of nominating to the Senate persons to fill the places of officials whose terms of office have expired.

The Constitution contemplates that the Senate will either confirm or reject such nominees within a reasonable time. If the Senate, in its wisdom, sees fit to reject the nominees, the Executive is thereby enabled to transmit other names for its consideration. With all due respect to the Senate, it is submitted that the spirit, if not the letter, of the Constitution requires that some action should be taken upon nominations transmitted by the Executive, and that they should not be 'hung up' indefinitely without decisive action thereon.

Last year, upon the expiration of the term of office of Railroad Commissioner, I duly transmitted to your honorable body the nomination of Edward A. Durant, but no action was taken thereon. He was neither confirmed nor rejected. This year, on March 2d, I nominated to the same office ex-Senator James Arkell, but no action was taken thereon. The Senate neglected either to confirm or reject this nomination, and on March 17th his name was withdrawn. There was no complaint, so far as could be learned. that there was not ample time afforded to ascertain his fitness and qualifications for the position; nor was there any intimation that further time was needed or desired therefor. On March 17th Michael Rickard was nominated to the same position, and the same course was pursued in respect to him. His nomination was never considered for a moment in executive session. After waiting fourteen days for some decisive action to be taken, his nomination was likewise withdrawn.

On April 1st William A. Armstrong was nominated to the same office, and on the same day James A. Buckbee was nominated for the other Railroad Commissionership, the term of which had also expired. The nominations were neither confirmed, rejected, nor in any way acted upon by the Senate in executive session or otherwise. For twenty days these two nominations remained pending before your honorable body, affording ample time, as was believed, to enable all necessary information to be obtained concerning the fitness of these nominees for the positions for which they were named. It was understood that Mr. Armstrong was well known to the Senate, and the other nominee lived almost within the very shadow of the Capitol.

On April 20th the Senate refused, by a vote of twenty to twelve, to go into executive session for the purpose of considering these nominations. The Executive could not compel action thereon, neither could he transmit other nominations so long as these were before the Senate. The only course left to him was to withdraw them, which was accordingly done on the afternoon of April 20th, their names having remained before the Senate for twenty days, and the nominations of Messrs. Rogers and Baker were transmitted in their places.

It is also a matter of public notoriety, undisputed by any one, that all of these nominations had been discussed in a party caucus of a majority of the Senate, and the conclusion reached that the nominations should not be acted upon by the Senate.

With this brief history of these nominations, it is respectfully submitted that the Executive has not been lacking either in respect or courtesy to the honorable Senate, and that every possible effort has been made, consistent with duty, to give to the people faithful and competent officials, and to present to the Senate names which it was hoped might prove satisfactory.

But it was claimed in the public debate had in the Senate at the time of the withdrawal of the names of Messrs. Armstrong and Buckbee, that their nominations had not been made in good faith or with any desire for their confirmation, and it was intimated or insinuated that if further time had been allowed, the nominations might receive favorable consideration. In this manner it was sought to throw upon the Executive the responsibility for their non-confirmation, which, it is respectfully submitted, properly belongs to the Senate. These nominations had been transmitted the same as all those which had preceded them, in the utmost good faith, and with a desire to afford the Senate the most ample opportunity for favorable action, but no action having been taken thereon for twenty days and the Senate having refused to enter into executive session, moved for the express purpose of considering them, it was not believed that any further time was required or really desired. Under such circumstances the Executive was justified in assuming that the Senate had no intention of confirming these nominations.

I seek by this communication to inform the Senate that I respectfully decline to be placed in any false position on the one hand, or to do the Senate any injustice or discourtesy on the other. If the Senate actually desires further time to consider the nomination of Messrs. Armstrong and Buckbee, or is now desirous of confirming them, I am anxious to oblige your honorable body. If by resolution or in some other proper formal manner the Senate shall communicate its desire or willingness to consider these nominations, or to confirm them, I announce to the Senate that I will cheerfully withdraw the present nominations and re-transmit the nominations of Messrs. Armstrong and Buckbee for its favorable action.

I await the pleasure of the Senate in this matter.

DAVID B. HILL."

April 25. To the Senate:

Veto of a bill entitled "An act to incorporate the New York Investment Company."

"Numerous companies similar to the one proposed by this bill are being organized in various parts of the country. There is no general law in this State providing for their incorporation. The object of this bill, and of the many similar bills likely to follow, some of which are already on their way, should be accomplished, once for all, by a carefully-framed general law providing for the incorporation of investment and trust companies.[23]

Executive disapproval seems to be the only method of bringing about a substitution of salutary general legislation for the multitude of special bills which waste so much of the Legislature's time and of the people's money."

April 25. To the Assembly:

Veto of a bill entitled "An act to prevent the spread of the disease in peach trees known as the yellows."[24]

"Several defects in the form of this bill are so serious as to necessitate withholding the executive approval. The most serious of the defects are the following:

First. The omission of the words 'knowingly and wilfully' in the first line of the first section would, in effect, render any person guilty of a misdemeanor whose trees became infected with the disease specified, or who, unawares, offered for sale any of the fruit thereof.

Second. Section seven provides that all the costs, charges, expenses and disbursements of the commissioners to be appointed, and of the town board 'may be recovered by the town from the owner of said diseased fruit, or from the owner of the premises on which said diseased trees stood, in an action of assumpsit.' This provision seems to contemplate that there shall be but one such owner of diseased trees or fruit in the entire town. It is also questionable whether an 'action of assumpsit' is recognized by the Code of Civil Procedure.

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[23] This bill was not passed over the veto, but a general law for the incorporation of trust companies, chapter 540, was passed at this session.

[24] This bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chapter 403, on the 19th of May.

It is but fair to state that this bill was intended to be recalled for amendment on Friday last, but on account of the sudden adjournment of the Senate the resolution passed but one house — the Assembly — in consequence of which this action of disapproval is rendered necessary. If a new bill is framed which will meet the objections stated, I will approve it."

April 25. To the Assembly:

Veto of a bill entitled "An act to provide for the improvement, enlargement, and the removal of obstructions from the channel of the State ditch, running from Liverpool to Mud Lock, in the town of Salina, county of Onondaga, and to improve the sanitary condition thereof by making provisions for taking proper care of the overflow or leakage of water from the Oswego canal and the accumulation of water in said ditch, and appropriating certain moneys for such purpose." [25]

"My only objection to this bill is that it seems to require the Superintendent of Public Works to make the expenditure provided for, instead of merely authorizing the same in his discretion. This objection can be obviated by a simple amendment to the present bill.

It is but fair to state that this bill was intended to be recalled for amendment on Friday last, but on account of the sudden adjournment of the Senate the resolution passed but one house — the Assembly — in consequence of which I am compelled to take this action of disapproval."

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[25] This bill was not passed over the veto, but another bill on the same general subject was passed, and became a law, chapter 351, on the 17th of May. By the new bill, the superintendent of public works was authorized, but not required, to make the suggested improvement.

The bill was not passed over the veto.

April 25. To the Assembly:

Veto of a bill entitled "An act to enable agricultural and horticultural societies to extend a more perfect protection to their property and the property of exhibitors at fairs, and to allow the board of managers to appoint a police for that purpose."

"This bill, without any reference to previous legislation, re-enacts, word for word, chapter 36 of the Laws of 1859, as it stood prior to the Repealing Act of 1886 (chapter 593), which repealed section 2 only of the act of 1859, so that sections 1 and 3 of this bill are simply repetitions of sections 1 and 3 of the act of 1859 as now in force.

The repealed section 2 of the act of 1859 was substantially incorporated in sections 446 and 648 of the Penal Code, except the provision that fines are to be paid intc the treasury of the society. This last provision is the only substantial change in the law which would be affected by this bill. Such change, if desirable, could be easily accomplished by a simple amendment to section 726 of the Code of Criminal Procedure. Or, if it is desirable to preserve accurately all the provisions of this bill, the simple and proper method would be, restore section 2 of the act of 1859 as it stood prior to its repeal by the act of 1886.

It is unwise to encumber the statute books with duplicate acts or parts of acts. The Legislature should seek to simplify rather than to increase the present confusion of the statutes.

Without passing upon the substantial merits of this bill, its method is so directly the reverse of the proper tendency above indicated, as to justify withholding the executive approval."

The bill was not passed over the veto.

April 25. To the Assembly:

Veto of a bill entitled "An act to incorporate the Young Men's Christian Association of Ogdensburg, St. Lawrence county, New York." [26]

"These useful and beneficent associations are ordinarily incorporated under the general act, chapter 319 of the Laws of 1848, commonly known as the 'Benevolent Societies' Act. Many important advantages are afforded by incorporation under the general act which are lost under a special act of incorporation like the present. Under the general act the management of the association is much more elastic and within the control of the association itself; the association can amend its certificate of incorporation and change its constitution as emergencies arise. But the detailed provisions of this special act can only be modified by new legislative action, requiring frequent and annoying applications to the Legislature for such modifying regulations as ought to be within the powers of the association itself.

The only provision of this special act which could not be gained under the general act is the establishment of a board of trustees to hold and manage the corporate assets, separate from the board of directors, by whom 'said corporation shall be managed.' The provisions of this bill are already in conflict as to the respective duties of these two boards, and conflicts between the two boards themselves in practical administration would be unavoidable.

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[26] **This bill was not passed over the veto. A general act for the incorporation of Young Men's Christian Associations was passed, and became a law, chapter 501, on the 2d of June.**

The additional security sought to be gained by a dual management must be largely delusive. If such dual management be an advantage, it does not counterbalance the advantages of incorporating under the general act; but if of sufficient importance for legislative interference in this special case, it is also of sufficient importance to be embodied, by proper amendment, in the general act."

April 25. To the Assembly:

Veto of a bill entitled "An act to provide for the protection of the banks of the Salmon river from injury in its use as a public highway and making appropriation therefor."

"This bill appropriates two thousand dollars, or so much thereof as may be necessary, for erection of proper dykes in the village of Sand Bank, town of Albion, Oswego county, upon the banks of the Salmon river, to protect the banks of the river and repair the injury thereto caused by the use of the river as a public highway.

This bill is open to several serious objections.

First. The bill does not merely authorize but absolutely requires the Superintendent of Public Works to perform the proposed work, allowing him no discretion in determining whether or not the work should be undertaken by the State. This alone is a sufficient objection to the bill.

Second. The Salmon river was declared a public highway by section 8 of chapter 793 of the Laws of 1871, entitled 'An act to incorporate the Salmon River Improvement Company.' The object of such corporation, as declared by said act, was to improve Salmon river and make the same navigable for the floating and running of logs and timber; and said corporation was, by said act, authorized to make such improvements without expense to the State, and to use said river for floating logs therein. Section 7 of said act provides for ascertaining and adjusting, by commissioners, any damages to the banks of said river occasioned by the use of the river as a public highway by said company. Whether or not this bill is an attempt to saddle upon the State the damages which said company were to pay for the privileges they gained by said act, it is not necessary now to determine. It is sufficient to say that this bill proceeds upon an entirely erroneous theory of the effect of an act declaring a stream to be a public highway. Such an act cannot, without compensation, change the title to the bed or the rights to the waters of the stream, but can only regulate the use of public rights already existing. (Chenango Bridge Co. *vs.* Paige, 83 N. Y. 178–185.) Neither the State nor any of its citizens can acquire new rights by such an act, and the State in no way becomes liable for the damages occasioned to the banks of the stream by the legitimate use thereof as a public highway. If the damages to the banks are caused by an improper use of the river, the persons causing the damage are alone liable, and the State should not pay for their misconduct.

Third. This bill proposes to appropriate public moneys for private or local purposes. (The People *vs.* Allen, 42 N. Y. 378.) It does not appear to have received the assent of two-thirds of the members elected to each branch of the Legislature, as required by the Constitution.[g] The executive approval of the bill would, therefore, be at best a nullity."

The bill was not passed over the veto.

April 25. To the Assembly:

Veto of a bill entitled "An act to authorize the Cortland Opera House Company to execute its mortgage to pay certain indebtedness." [27]

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[g] Const. 1846, art. 1, § 9.

[27] This bill was not passed over the veto, but the governor's suggestion as to an amendment of the general law of 1875, chapter 611, was embodied in an act, chapter 394, passed in 1888.

"The Cortland Opera House Company was incorporated under the general act of 1875 (chapter 611) for the organization of business corporations. The experience of this company, in attempting to mortgage its real estate, has disclosed a defect in the general act of 1875, which should be remedied by amendment to the general act, and not by a special act for every corporation organized thereunder. This bill is constructed on the theory that each one of the many corporations organized, and to be organized, under the act of 1875, must come to the Legislature for a special act before its real estate can be mortgaged. Thus the business of the corporations is delayed, and the valuable time of the Legislature is frittered away in preparing and examining a multitude of special bills, the purposes of which could be effectually accomplished by one single amendment to the general act.

Section 13 of the act of 1875, which provides that corporations organized under said act may borrow money on their bonds, should be amended by adding authority also to mortgage with the usual limitations. Such an amendment would render this bill, and the multitude of similar bills otherwise to follow, wholly unnecessary."

April 26. To the Assembly:

Veto of a bill entitled "An act to authorize the commissioners of sewers of the village of West Troy to contract with the West Troy Water-works Company for a supply of water for flushing the sewers of said village."

"Section 5 of chapter 737 of the Laws of 1873, as amended by section 1 of chapter 422 of the Laws of 1885, authorizes the board of trustees of any village incorporated under general or special act, to contract for a term of one year or more with any water company organized under the laws of this State, for the delivery by said company of water, through hydrants or otherwise, for fire, sanitary or other public purposes. This general act fully authorizes the village of West Troy to carry out all the purposes of this bill, in substantially the same manner proposed by the bill.

It is unfortunate that the time of the Legislature should be occupied with special legislation for purposes already covered by general laws.''

The bill was not passed over the veto.

April 28. To the Assembly:

Veto of a bill entitled "An act to authorize the construction and maintenance of an iron bridge over the Catskill creek, about one mile northerly of the village of Cairo, in the town of Cairo, county of Greene, and to authorize the said town to borrow the money necessary therefor."

''This bill does not merely authorize but absolutely directs the town commissioner of highways to erect the bridge. How can the Legislature be sufficiently well informed of the local situation to intelligently take away from the local authorities all discretion as to whether or not a bridge should be erected in this town? How is the Legislature or the Executive to know whether a bridge is needed 'over Catskill creek, about one mile northerly of the village of Cairo, in the town of Cairo, county of Greene,' or whether the people of the town who are to pay for the bridge desire to do so? The first principles of local self-government, lying at the foundation of our political structure and constituting the most fundamental safeguards of individual liberty, require that the determination of such a question should be left to the local authorities directly interested.

Accordingly, we find that as early as 1838 an act was passed (chap. 314), which has not since been expressly repealed, providing that the board of supervisors of each county in this State shall have power, whenever lawfully convened, to cause to be levied and collected such sums of money as may be necessary to construct and repair bridges therein; to prescribe upon what plan and in what manner the moneys so to be raised shall be expended; and to apportion such tax among the several towns and wards of their county, as shall seem to them to be equitable and just.

The Court of Appeals in 1854 (Hill *agst.* Supervisors, 12 N. Y. 52, at pp. 59 and 60), in construing this act, say: 'A very large number of special acts of the Legislature had been passed between 1830 and 1838 providing the particular expenditures in the erection and repair of bridges. * * About two hundred acts in relation to bridges and bridge companies are to be found in the Session Laws during the period above referred to. * * The general purpose of the provisions on this subject of the act of 1838, was to obviate the evil which had rendered necessary so frequent applications to the Legislatures, by conferring upon the boards of supervisors a further and new discretionary power from time to time to aid in the construction and reparation of bridges within their respective counties. * * By its terms the only limitation of the subject in respect to which the power is to be exercised is, that the bridges are to be in the county.'

This language, used by the Court of Appeals over thirty years ago, is still applicable to the persistent tendency to over-legislation in the same line, of which this bill is one of the many illustrations.

Still another general law, which remains unrepealed, was enacted in 1869 (chapter 855), sections 1 and 2 of which, as amended by chapter 250 of the Laws of 1882. provided that boards of supervisors shall have power to provide for the location, erection or repair of any bridge, except over navigable streams (this very creek has been adjudged not to be a navigable stream within this statute.

People *vs.* Meach, 14 Abb., N. S., 429), and for the apportioning the expense of any bridge upon such town for the purpose aforesaid. This statute was construed by the Court of Appeals in 1876 (People, ex rel. Atkinson, *vs.* Tompkins, 64 N. Y. 53), sustaining the authority of the board of supervisors to act in such matters.

Still a third general law was passed upon this subject in 1875 (chapter 482), subdivision 6 of section 1 of which, as amended by chapter 451 of the Laws of 1885, and as still in force, provides that boards of supervisors may, upon the application of any town liable to taxation, in whole or in part, for the erection of any bridge, made by a majority of the electors thereof, voting at a regular town meeting, or at a special town meeting called for that purpose, or upon the application of the supervisor, with the consent of the commissioner of highways, town clerk and justices of the peace of the town, authorize such town to erect the bridge and to borrow such sums of money as may be necessary therefor.

Here are three general acts already in existence, each of which provides for a determination by the local authorities of the necessity of this bridge, and fully equips such authorities with power to carry out such determination, the first act by levying and collecting the necessary tax, and each of the two latter acts by authorizing the town to borrow the necessary money.

I have been thus explicit in order to emphasize, if possible, to this Legislature the folly of wasting its valuable time in the latter days of its session, and of wasting the time of the Executive by undertaking to do supervisors' work, which the supervisors, by force of their situation, are much more competent to perform. Had the time spent on this bill been devoted to a revision and consolidation of the various general statutes upon this subject, so that ordinary local officers might be able to understand the statutes without the aid of a skilled lawyer to harmonize their overlapping provisions and to extract their combined meaning, then a substantial and permanent product would have resulted from the labors of the Legislature.''

The bill was not passed over the veto.

April 29. To the Senate:

Veto of a bill entitled "An act to amend chapter three hundred and seventy of the Laws of eighteen hundred and seventy-five, entitled 'An act to amend and consolidate the several acts relating to the city of Elmira.'" [28]

"This bill proposes to regulate political primaries and conventions for the nomination of city officers in said city, and to make the violation of any of the provisions thereof a misdemeanor.

There are only three serious objections to the bill:

First. It is unconstitutional.

Article III, section 16 of the Constitution provides that no private or local bill shall embrace more than one subject, and that shall be expressed in the title. The charter of the city of Elmira is a local act. If the title of a bill purports to amend such charter, the contents of the bill must be such as come strictly within the scope of municipal purposes, such as properly pertain to the administration of the city's corporate affairs. The regulation of party caucuses is no more germane to municipal government than would be a requirement that certain contracts between the inhabitants of the city must be in writing.

Second. If the provisions of this bill are meritorious, its merits should not be confined to the city of Elmira, but should be extended at least to all other cities similarly situated.

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[28] **This bill was not passed over the veto. A general law, chapter 265, relating to primary elections, was passed at this session.**

Third. It is well known that a general bill for the regulation of political primaries and conventions is now pending in the Legislature, which, if passed, will apply to the city of Elmira and render the bill herewith returned unnecessary. A carefully-framed general act which will fulfill the beneficent intentions of this bill will be much preferable to any special legislation."

April 29. To the Assembly:

Veto of a bill entitled "An act to provide for the consolidation of certain road districts and the working and better repairing of certain roads and streets in the town of New Baltimore, Greene County, New York."

"Article III, section 18 of the Constitution of this State provides that the Legislature shall not pass a private or local bill for working roads or highways.

The Court of Appeals (People, ex rel. Commissioners, *vs*. Banks, 67 N. Y. 568–574) has declared that "this provision was designed to prevent any interference with the general highway system of the State, or with the keeping of the ordinary highways and public roads in repair under that system."

This bill comes within one of the classes of special legislation discountenanced by the Constitution."

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act to legalize the official acts of Joseph F. Stier as notary public."

"If a notary public pays so little attention to his office as not to know when his term expires, he should take the consequences of his own negligence.

I have heretofore refused to approve a general act for the wholesale legalization of the illegal acts of notaries public, and the same reasons apply to each special act for a like purpose."

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act to enable the Otsego County Agricultural Society to mortgage its real estate." [29]

"This bill recites that the society in question was organized under the general act of 1855 (chapter 425). This act does not provide for mortgaging the real estate of corporations organized thereunder. Section 7 of the act of 1855 does, however, provide for the sale of the real estate of such corporations by leave of the Supreme Court. If this section should be amended by adding also power to mortgage under like conditions, then it would not be necessary for each of these corporations, in turn, to apply to the Legislature whenever a mortgage of its real estate may become necessary. The return of this bill without Executive approval will probably cause the general law to be so amended."

April 29. To the Assembly:

Veto of a bill entitled "An act to provide for the appointment of a road commissioner in the town of Fishkill, Dutchess county."

"This bill proposes to abolish the office of commissioner of highways in the town of Fishkill, and to substitute for such officer a road commissioner to be appointed by the supervisor, town clerk and justices of the peace of the town, to have the same powers and authority and to be subject to the same duties and liabilities as commissioner of highways, with certain specified exceptions, the most important of which is that such other town officers are to be associated with the road commissioner in the performance of his principal duties.

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[29] This bill was not passed over the veto. The general act for the incorporation of agricultural and horticultural societies, L. 1855, chap. 425, was amended at this session, L. 1887, chapter 506, so as to authorize such societies to mortgage their real estate.

Certainly one man can be found in the town of Fishkill who is competent to perform all the duties imposed by law upon a commissioner of highways, without calling to his assistance the supervisor, town clerk and justices of the peace, who are supposed to be elected with reference to the performance of wholly separate duties. With seven officers to take charge of the highways of this town, no one of them would take any special interest therein, or could be held responsible for the management thereof. Neither does there appear to be any reason why the people of the town of Fishkill cannot be trusted to elect their commissioner of highways as safely as the people in the other towns of the State.

But apart from the adaptability of this bill to the particular town of Fishkill, the bill carries upon its face its own condemnation as a pernicious specimen of special legislation. To allow such a bill to become a law would be to begin the transformation of a uniform system of highway administration throughout the State into a heterogeneous mass of ill-digested varieties, each town having a law unto itself, and requiring new special legislation for every change desired."

The bill was not passed over the veto.

April 30. To the Assembly:

Veto of a bill entitled "An act to provide for the repaving of Nineteenth street in the city of New York from First avenue to East river."

"The object of this bill is to transfer the expense of such repaving from the adjoining property-owners to the city. This bill has received the formal disapproval of the local authorities, upon the ground that such adjoining property is now held by virtue of original grants from the city, made upon the express condition that the grantees and their successors should at all times keep such street properly paved. In any event, there seems to be no sufficient reason for excepting the repaving of this portion of Nineteenth street from the operation of the present laws regulating the same."

The bill was not passed over the veto.

May 6. To the Assembly:

Veto of a bill entitled "An act to amend chapter five hundred and seventeen of the Laws of eighteen hundred and eighty-one, entitled 'An act to establish a board of fire commissioners for the city of Rome.'"

"The object of this bill is to extend the jurisdiction of the board of fire commissioners of the city of Rome over the police department of that city also. Accordingly it empowers such board to appoint and remove all policemen in the city, to fix their compensation, and to make rules and regulations for the government of the police department generally. The title of the bill gives no indication of any such object, and is, therefore, repugnant to the spirit of section 16 of article III of the Constitution requiring the subject of every local bill to be expressed in its title.

Section two of this bill, by evident clerical error, amends section two of the amended act instead of section 11 thereof, as was undoubtedly intended, thereby creating confusion and uncertainty, if not more serious trouble.

Moreover, public sentiment seems to be greatly divided in the city of Rome as to the advisability of this measure. The common council, by a vote of twelve to two, have protested against it, and there is apparently much opposition to it among citizens generally.

So important a change in the municipal government as is contemplated by this act should not be hastily adopted, and should only be made where the people are substantially united in favor of it.

It seems to be preferable to delay the enactment of so important a measure until public sentiment shall be more manifestly in its favor, and its provisions can be thoroughly perfected.''

The bill was not passed over the veto.

May 9. To the Assembly:

Veto of a bill entitled "An act to define the boundaries of the Mohawk cemetery in the village of Mohawk, county of Herkimer, to establish a permanent board of trustees, and to define their powers and duties."

'' Nearly all the substantial provisions of this exceedingly prolix bill are already contained in subdivision 17 of section 17 of chapter 157 of the Laws of 1844, constituting the charter of the village of Mohawk, as amended by chapter 412 of the Laws of 1880.

Still other provisions of this bill are contained in the general statutes relating to cemeteries in villages. The bill makes no express reference to any of these previous statutes, but sweepingly repeals ' all acts or parts of acts heretofore passed relative to said cemetery.'

This bill should amend the subdivision of the village charter aforesaid, if any amendment thereto is desirable. The bill is excessively minute in describing and limiting the powers and duties of the cemetery trustees. So much detail would necessarily involve frequent applications to the Legislature for such modifications as the trustees themselves should be allowed to make.

The first section of the bill is wholly unnecessary. The only effect of the section is to declare the name by which the cemetery shall be known. The second section declares that the 'village trustees are hereby constituted a permanent board of trustees;' that they shall hold the title to the said lands, except the lots or portions that now are or hereafter shall be conveyed.

It is not denied that there are some new and perhaps useful provisions in the bill, but they are so hidden away in a mass of needless minutiæ that it seems wiser to allow the present more compact and clear statute relating to this cemetery to remain undisturbed."

The bill was not passed over the veto.

May 9. To the Assembly:

Veto of a bill entitled "An act to authorize the treasurer of Broome county to sell property in the city of Binghamton for unpaid taxes."

"The object of this bill is to confer upon the treasurer of Broome county the authority to sell lands in the city of Binghamton for unpaid State and county taxes, which, by the general statutes, is conferred upon the Comptroller. Whatever may be thought of the policy of the numerous special acts conferring such authority upon the county treasurers of various counties in this State, it is certainly an unwise subdividing of special legislation to give a county treasurer such authority in a portion only of his county. Upon so important a subject, ultimately involving the title of a large portion of the lands of the State, a uniform system is very desirable. If such uniformity cannot be maintained throughout the State, it should certainly prevail over the entire territory of a county ordinarily situated."

The bill was not passed over the veto.

May 10. To the Assembly:

Veto of a bill entitled "An act to provide for a convention to revise and amend the Constitution." [See note 12.]

"My objections are as follows:

First. The bill postpones the holding of the constitutional convention until next year.

The people having voted, last fall, by an overwhelming majority, in favor of a convention, it became the imperative duty of the present Legislature to provide for the holding of such convention during this year. This course was not only required by the spirit of the Constitution, but was sanctioned by precedent and demanded by every consideration of propriety. The action of the Legislature in delaying the passage of this measure until the closing days of the session, and determining that the convention should not be held until another year, seems to be in direct defiance of the will of the people, and without precedent in the history of the State.

Second. The bill contemplates a partisan convention by making no provision for representation other than to the two principal political parties of the State. This was not what the people demanded or expected. It provides for only one delegate from each Assembly district, and for thirty-two delegates-at-large, in effect, to be equally divided between the two principal political parties. It makes no other provision for minority representation. It thereby virtually excludes from membership the representatives of the elements of organized labor and of prohibition, who should properly be afforded an opportunity of participating in the work of such a convention. My views upon the subject were expressed in my annual message, as follows:*

'It is believed that, so far as is possible, the various interests in the State should be represented in the convention, which should include not only the adherents of the two principal political parties, but the prominent representatives of the prohibition, license, woman suffrage, labor reform and anti-monopoly sentiment, as well as those identified with any other special interest of importance desiring changes in the organic law of the State, thereby rendering it emphatically the people's convention as contemplated by the Constitution.[b] For this purpose it is deemed advisable that as many delegates be elected from the State at large as may be practicable, and experience seems to show that this method will also be more likely to secure a better class of delegates than the district system.'

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* *Ante*, p. 309.

It is to be regretted that these suggestions have been entirely disregarded or ignored in the framing of this measure.

Third. It provides for the election of delegates at the annual election next November, rather than at a special election.

This will inevitably cause the selection of delegates to be complicated with partisan considerations, and will be less likely to ensure a representative body possessing the full and entire confidence of the people. A constitutional convention is not the proper field for securing mere party advantage. The people do not desire a strict partisan convention, nor will they countenance any effort to engraft upon the Constitution the mere political dogmas of any partisan organization. The ablest, best and purest men in the State should be selected for the work of such a convention, regardless of political considerations or party predilections.

Such a result, however, is impossible under the provisions of this bill, where the election of delegates would be necessarily complicated with an annual State and local election.

Instead of the selection of the best qualified representatives, and those possessing the highest character and ability, the practical effect of this provision of the bill would be the exclusion of such men, and the choosing of those of mediocre ability. For it would almost inevitably come about that the weaker candidate before the Assembly convention, who could not secure the nomination for member of Assembly, would be propitiated by a nomination for 'Assembly Delegate' for the constitutional convention. By this action the friends of both candidates would be satisfied, and, while such a combination oftentimes would be strong, politically speaking, the effect would be to bring together a convention composed not of the strongest but of second-rate men from the respective Assembly districts.

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[b] Const. 1846, art. 13, § 2.

Such considerations as I have mentioned have not been without weight with other Legislatures, and the selection of delegates for all the preceding constitutional conventions held in this State was made at special elections held apart from the general elections. This was so for the conventions of 1801, of 1821, of 1846, and of 1867.

The only argument or excuse which has been advanced for this unprecedented action on the part of the present Legislature is that by the postponement of the election to November the expense of a special election would be avoided. That expense is nothing when compared with the importance of the subject. But even if it were, this bill, by its very terms, refutes that argument of economy. By section eleven an appropriation of $320,000 is made to pay the expenses of the convention of 1888. The act for the Convention of 1867 made an appropriation of only $250,000. Exactly where the argument of economy can be advanced, side by side with an increase of appropriation of $70,000, I am unable to perceive.

This bill also directs that the convention shall meet in the Assembly Chamber in the Capitol, in January, 1888, a time at which the Legislature will, in the ordinary course of events, also be in session. True, it allows an adjournment to such place within the State as the convention may decide upon, and authorizes the rental of a proper place in which the convention shall hold its sittings, but there is no hall in the State suitably located which can be obtained without large expense. Possibly the increased appropriation of $70,000 is intended to meet this unnecessary increase in expense. With fine and suitable rooms in the Capitol, which has already cost many millions of dollars, standing unused during seven months in the year, I am sure that the people of the State would not look with favor upon the expenditure of $70,000, or any considerable part thereof, in securing accommodation for a convention which might more properly meet during months when the Legislature is not in session.

Fourth. It provides for, or permits the submission to the people of the proposed amended Constitution at the general election of 1888. At that election a President of the United States is to be chosen. All other questions become minor and are inevitably lost sight of in a campaign conducted upon national issues. The greater must overshadow the less, and a calm, dispassionate discussion of amendments to the organic law of the State, even though they were, in reality, of the utmost concern to its future welfare, would be impossible. At least this has been the experience of the past, and our political activities have not so changed as to lead to the belief that the future would show a different result. The probabilities are that whether the work of the convention were accepted or rejected by the people at such election, the sober second thought of calmer political years succeeding would condemn the unthoughtful conclusion, so far as constitutional questions were concerned, of the year 1888.

Fifth. The basis of representation proposed for the convention is grossly partisan and unjust. Fair-minded men will concede that such a convention ought to represent the majority of the people of the State. It at least should not represent the minority of the people to the exclusion of the majority. Yet the practical effect of this measure is to accomplish just the latter result.

The delegates (other than the few delegates-at-large) are to be chosen by Assembly districts, established under an apportionment made in 1879, which was based upon an enumeration made twelve years ago. No one pretends that that apportionment is fair or just at the present time. Its glaring inequalities cannot be justified nor excused. It is maintained only by the persistent refusal of the Legislature to provide for a new enumeration and reapportionment in accordance with the express commands of the Constitution.[1]

Under the present inequitable apportionment of Assembly districts, St. Lawrence county, with only 86,000 population, would have three delegates in the convention; while Orange county, with over 88,000 population, and Queens county, with over 90,000 population, would only be entitled to two delegates each. Other counties exhibit similar instances of unfairness. The Assembly districts in the great counties of Kings and New York show an average of about 20,000 population more than the average of an equal number of districts in the interior of the State. Yet this measure provides for the election of delegates in accordance with this partial and inequitable basis of representation.

The latest apportionment of the State was made in 1883, based upon the Federal census of 1880, and its fairness has never been questioned. There was no difficulty in providing for the election of delegates from Congressional districts. A certain number could be chosen from each district and a provision could easily be made for proper minority representation.

This subject was early brought to the attention of the Legislature in January last, in my annual message, wherein it was stated as follows:[*]

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[1] Const. 1846, art. 3, § 4.

[*] *Ante*, p. 311.

'It is assumed that in a matter of such vast consequence and importance as the revision of the Constitution, there will be no endeavor to obtain any supposed political or partisan advantage by a refusal to permit the people of the State to be fairly and equitably represented in their own constitutional convention according to the last enumeration and apportionment of its inhabitants.'

The delegates to the constitutional convention of 1867 were not selected by Assembly districts, and although they were so chosen for the earlier conventions, yet fair and equitable apportionments of Assembly districts had immediately preceded the holding of such conventions, while now there has not been an Assembly apportionment in twelve years.

There are many minor defects in the bill, but these it is not deemed necessary to discuss. The objections stated are sufficient, I believe, to lead substantially all the people of the State to the same conclusion at which the more reputable portion of the press of the State has already arrived, namely, that the bill was urged as a partisan measure, that its passage was secured only under caucus pressure, and that its essential provisions are in open disregard of the general interests of the State.

The alternative is presented to the Executive either to allow this imperfect and unsatisfactory bill to become a law, or, by the imposition of a veto, to assume the risk that no other act for a convention will be passed by this Legislature. My duty to the State excludes the former alternative, and, as to the latter, I am of the belief that there is yet ample time for the Legislature to prepare a proper bill. If no such disposition effectively manifests itself, another Legislature, with a higher sense of its responsibility to the State, can perform the neglected duty.

In order to afford this Legislature every opportunity for further deliberate action in this important matter, I have put aside the multitude of bills previously received, and awaiting my action, and have carefully considered this one. It is promptly returned for such further consideration as its importance demands.

The conclusion at which I have arrived I believe fairly represents the general sentiment of the State. The newspaper press, that usually so faithfully announces public opinion, does not advocate this measure in its present shape; the people do not want it, and, in fact, hardly any one outside of the Legislature and not blinded by party zeal has ever even assumed to believe that it could receive Executive approval."

The bill was not passed over the veto. [See note 12.]

May 12. To the Legislature: Transmitting the number of pardons, reprieves and commutations. The number of pardons was 27, commutations 19, reprieves 1.

May 12. To the Assembly:

Veto of a bill entitled "An act to amend section sixteen of title four of chapter five hundred and ninety-eight of the Laws of eighteen hundred and seventy, relative to the city of Troy, as amended by chapter two hundred and forty-eight of the Laws of eighteen hundred and eighty-two, and as further amended by chapter three hundred and thirty of the Laws of eighteen hundred and eighty-four, as further amended by chapter four hundred and two of the Laws of eighteen hundred and eighty-five, and the several acts supplemental thereto and amendatory thereof."[30]

"The section of the Troy city charter proposed to be amended by this bill, as enacted in 1870, provided, among other things, that the entire expense of constructing sewers in said city should be apportioned and charged upon the property and persons benefited thereby.

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[30] This bill was not passed over the veto. Another act was passed at this session, chapter 411, which provided that the expense of repairing sewers, with several other items of expenditure relative to public improvements in Troy, should be paid by general tax.

In 1882, by chapter 248 of the Laws of that year, this section of the city charter was amended by providing that one-half only of the expense of constructing sewers in certain specified streets should be paid by the adjoining property-owners, and that the remaining one-half should be paid by the city at large.

In 1884, by chapter 330 of the Laws of that year, this section of the city charter was again amended by striking out a portion of the streets so excepted from the general provisions of the section and adding certain others.

In 1885, by chapter 71 of the Laws of that year, similar changes were made. Again, in the same year, by chapter 402 of the Laws of that year, still other streets were added to those excepted from the general provisions of the section.

It appears from this bill, that on June 4th, 1886, the common council of the city of Troy ordered the construction of a sewer under the general provisions of the city charter, by which the entire expense of constructing such sewer should be paid by the adjoining property-owners. It also appears from this bill, that such sewer has been either partially or wholly completed, and that some of the adjoining property-owners have already paid their entire assessments. This bill now proposes to transfer from such adjoining property-owners to the city at large the payment of one-half of such assessments, by adding the streets through which the last-mentioned sewer runs to the number heretofore excepted from the general provisions of this section of the city charter.

It is understood that three similar bills relating to other streets in said city are now pending in the Legislature. It is evidently time that these frequent applications to the Legislature should cease. If peculiar local circumstances justify charging the property-owners along certain streets with only one-half the expense of constructing sewers therein, instead of with the entire expense thereof as in other portions of the city, the common council must, by force of their situation, be better judges of such circumstances than the Legislature. If such exceptions are to be allowed in any case, this section of the city charter should be amended by giving the common council the power to decide whether the circumstances justify the relief asked for.

The local authorities appear to be opposed to this bill. It certainly seems unjust that property-owners who have paid the entire expense of sewers in front of their own premises should be compelled to contribute toward paying one-half of the expense of sewers in other streets also. But without passing upon the justice of relieving the adjoining property-owners from payment of one-half of the expense of constructing this particular sewer, it is insisted that the city charter must either be adhered to as it now stands, or else so amended as to allow strictly local affairs to be regulated by the local authorities, and so as to furnish no occasion for applying to the Legislature for the passage of local bills of this nature.''

May 16. To the Senate:

Veto of a bill entitled "An act in relation to the commissioners for loaning certain moneys of the United States in the county of Ontario."

''This bill provides for the turning over into the hands of the loan commissioner of the county of Ontario, certain moneys known as the United States deposit fund, which had previously been covered into the State treasury by such commissioners, within certain dates specified therein.

The policy inaugurated by this bill is opposed by the Comptroller of the State, who asserts that the financial interests of the State will be better subserved by allowing these moneys to be invested by the Comptroller and their control retained by him.

A portion of the moneys mentioned in this bill has already been invested, and complications are likely to arise in the enforcement of the act.

This general fund has been greatly depreciated in the past by the negligence and misconduct of loan commissioners, and it seems to be a wise policy to gradually cause the same to be covered into the State treasury.

I cannot, therefore, approve this special act establishing a different policy for the county of Ontario than that which the Comptroller insists should be gradually applied to the whole State."

The bill was not passed over the veto.

May 16. To the Assembly:

Veto of a bill entitled "An act relating to the school commissioner districts in and for the county of Steuben, and to increase the number of school commissioner districts in said county."

"The object of this bill is to establish a third school commissioner district in the county of Steuben. Chapter 482 of the Laws of 1875, as amended by chapter 543 of the Laws of 1881, authorizes the boards of supervisors of the several counties of the State 'to divide any school commissioner district which contains more than two hundred school districts, and to erect therefrom an additional school commissioner district.' If either of the present school commissioner districts of Steuben county now contains over two hundred school districts, the board of supervisors of that county have legislative jurisdiction over the subject-matter of this bill. If the limit of two hundred school districts as fixed by the general law is too high, such limit should be reduced by amendment to the general law.

This is the second bill of this nature which has passed the present Legislature.

As each school commissioner receives an annual salary of $1,000, payable out of the free school fund of the State (Laws of 1885, chapter 340, section 5), a temptation naturally exists to increase local officers without increasing local taxation.

A proposal to amend the general law is the only fair test of the principle of this bill.''

The bill was not passed over the veto.

May 16. To the Assembly:

Veto of a bill entitled "An act to amend section seven hundred and sixteen of chapter four hundred and ten of the Laws of eighteen hundred and eighty-two, entitled 'An act to consolidate into one act and to declare the special and local acts affecting public interests in the city of New York in relation to the dock department.'"

''This bill amends said section 716 by adding certain restrictive provisions at the end of the section as passed in 1882. By the amendments of 1884 (chapter 517), important provisions were added at the end of the original section which are by manifest error omitted from this bill. These omissions and some minor clerical errors and other defects are alone of sufficient importance to necessitate Executive disapproval of the bill, especially in view of the assurance of the dock department that the difficulties sought to be obviated by this measure can and will be satisfactorily adjusted in a practical manner without necessitating any legislation for that purpose. The bill is opposed by the dock department and other local authorities of New York city.''

The bill was not passed over the veto.

May 16. To the Assembly:

Veto of a bill entitled "An act to incorporate the Veteran Association of the Seventy-first Regiment, National Guard of the State of New York."

"The second section of this bill reads as follows:

'SECTION 2. The objects of said corporation are to promote social union and fellowship, and preserve and continue the recollection of the service of the Seventy-first Regiment.'

My predecessor, in disapproving a similar bill, remarked:* 'The association of the veterans for social and benevolent objects, and to foster and keep alive their interest in the organization, is a laudable and pleasant thing to do, and this can be fully accomplished under existing statutes.'

There already exist two general statutes for the incorporation of societies or clubs for social, recreative and benevolent purposes (chapter 368 of the Laws of 1865, and chapter 267 of the Laws of 1875), under either of which this association might be incorporated for the purposes set forth in the second section of this bill."

The bill was not passed over the veto.

May 18. To the Senate:

Veto of a bill entitled "An act to amend chapter three hundred and four of the Laws of eighteen hundred and fifty-two, entitled 'An act to authorize the board of supervisors of the several counties of this State to make the office of district attorney a salaried office, and to fix the salary thereof."

"This act proposes to amend a statute of the State relating to district attorneys, which has been in existence since 1852, by providing that district attorneys, in addition to their salaries, may retain for their own use any taxable costs which they may recover. The act of 1852 required district attorneys to account for such costs to the county.

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* *Ante*, vol. 7, p. 1111.

There has been no complaint of any injustice having been done under the original act. It does not seem necessary that any additional inducements should be held out to district attorneys to secure the prompt and efficient discharge of their duties, including the bringing of suits for forfeited recognizances. They should be paid a liberal salary, which ought not to be extravagant in any respect. It is unwise to make it for their personal and pecuniary interest to make a specialty of the suing of forfeited recognizances. Such forfeitures are technical many times, and need not be unnecessarily encouraged. The duties of district attorneys should be discharged irrespective of such considerations. The law, as it has existed since 1852, has worked well enough, and there is, at present, no particular necessity of changing it.''

The bill was not passed over the veto.

May 18. To the Assembly:

Veto of a bill entitled "An act to release to Mary Beattie the right, title and interest of the people of the State of New York in and to certain real estate in the town of Tusten, Sullivan county."

'' This bill has the appearance of an ordinary escheat bill, and I assume that the Legislature very naturally misapprehended its real character. The Comptroller informs me that the lands proposed to be given away by this measure were purchased by the State upon a mortgage foreclosure in 1829, and actually cost the State $373.12, without including interest.

The bill is manifestly an improper disposition of the property of the State, besides being clearly unconstitutional.''[1]

The bill was not passed over the veto.

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[1] Const. 1846, art. 8, § 10.

May 18. To the Assembly:

Veto of a bill entitled "An act to amend section three thousand and sixty-three of the Code of Civil Procedure."

"Frequent changes in the Code should be avoided as much as possible. The propriety of the proposed amendment is not so clearly apparent as to warrant a radical change in the practice on appeals to County Courts which has existed for many years, and which seems to have given reasonable satisfaction."

The bill was not passed over the veto.

May 18. To the Assembly:

Veto of a bill entitled "An act to amend chapter one hundred and eighty-one of the Laws of eighteen hundred and seventy-five, entitled 'An act to authorize the villages of the State of New York to furnish pure and wholesome water to the inhabitants thereof.'"[31]

"This bill proposes to change the qualifications of voters at special elections in villages for determining whether water taxes shall be imposed. The present law requires that voters at such elections shall be 'tax payers whose names appear upon the last assessment-roll of the village.' This bill proposes to substitute therefor, 'liable to be assessed for such tax in his own right or in the right of his wife.' The present law is clear and easily ascertainable. The proposed change would lead to uncertainty and confusion. The question of the right to vote under the proposed change would often be incapable of exact determination. The right to vote should always be as far as possible removed from all doubts and uncertainties."

The bill was not passed over the veto.

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[31] In 1895, by chapter 146, the general village law of 1870, chapter 291, was amended so as to authorize a person to vote on a tax proposition if he or his wife owned property assessed on the last assessment roll of the village. This rule was continued in the general village law of 1897, chapter 414.

May 18. To the Assembly:

Veto of a bill entitled "An act to amend section three of chapter four hundred and sixty-six of the Laws of eighteen hundred and sixty-six, entitled 'An act in regard to normal schools.'"

"The principal amendment proposed by this bill consists in permitting one of the local managers of the normal schools, who may be designated as secretary of the board, to receive an annual salary.

There seems to be no absolute necessity for this change, and its propriety is very doubtful. The policy of allowing local officers of State institutions (which positions are mainly honorary and much sought after) to receive pay for their services to the State, furnishes a bad precedent.

It is not deemed wise to inaugurate such a precedent at this time."

The bill was not passed over the veto.

May 18. To the Assembly:

Veto of a bill entitled "An act for the improvement of the Delaware river, and the protection of the territory and boundaries of the State."

"This bill appropriates fifteen thousand dollars 'for the purpose of improving the navigation of the Delaware river, and the rafting channel thereof, and protecting the lives and property of citizens of this State.'

This bill is open to the following objections:

First. The title expresses more than one subject.[k]

Second. The bill is mandatory.

Third. The measure is the outcome of a popular delusion that whenever a stream is declared a public highway, the State thereby becomes liable to improve its channel and banks for the benefit of navigators and riparian owners. No such liability or obligation exists.''

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[k] Const. 1846, art. 3, § 16.

The bill was not passed over the veto.

May 18. To the Assembly:

Veto of a bill entitled "An act to amend chapter twenty-five of the Laws of eighteen hundred and seventy, entitled 'An act to incorporate the city of Rome.'"

'' The boundaries of the town and city of Rome are now co-terminous. This bill proposes that a portion of the present city and town, known as the ' corporation tax district,' shall be a city and town known as the city of Rome and town of Rome, and again declares that the inhabitants within such district shall be a corporation by the name of the city of Rome. Thus two inconsistent names are given to the new city territory, and no name left for the balance. It is understood that this bill was intended to be supplemented with another one, which would remedy part of this inconsistency, but which has not passed the Legislature.''

The bill was not passed over the veto.

May 18. To the Assembly:

Veto of a bill entitled "An act to give jurisdiction to the Board of Claims to hear, audit and determine the claims of James M. Dudley against the State, and to ratify his retainer by the Comptroller to bring and conduct certain cases."

The Governor said this was a private bill, and that it might seriously be questioned whether it was in violation of section 16 of article 3 of the Constitution, in that it embraced two subjects, namely, conferring jurisdiction on the Board of Claims to hear the claims of the beneficiary, besides ratifying his alleged retainer.

"Passing this consideration, the bill is objectionable, because it is unnecessary. The claimant was retained, as it would appear from the bill, by the State Comptroller, to conduct three cases brought against the State which threatened its title to certain lands. Assuming the facts to be as disclosed by the bill, the Comptroller has power to audit and pay the claims. There is a regular appropriation in the Supply bill, from which expenses, incurred by that official in protecting the State's title to lands, may be paid by him.

The bill is, therefore, not only special legislation in the strictest sense, but it is entirely superfluous."

The bill was not passed over the veto.

May 18. To the Assembly:

Veto of a bill entitled "An act to amend chapter five hundred and five of the Laws of eighteen hundred and seventy-three, entitled 'An act to reorganize the village of Gloversville.'"

"This bill provides that 'any member of the fire department of said village shall be holden to duty therein for the term of five years from his enlistment, unless disability shall incapacitate him from such service, or he shall be sooner discharged by the trustees.' No provision is made as to how the fireman shall be 'holden to duty,' whether by penalty, fine or imprisonment.

It is not usually necessary to enforce the organization of fire companies by such severe means as might be adopted under the novel provision of this bill.

Unusual exemptions in favor of firemen are also granted by this bill. It cannot be necessary for the organization of an efficient fire department in Gloversville, to adopt such extreme measures as are proposed by this bill."

The bill was not passed over the veto.

May 18. To the Assembly:

Veto of a bill entitled "An act to amend chapter three hundred and eighty-eight of the Laws of eighteen hundred and sixty-seven, entitled 'An act to incorporate the village of Savannah, county of Wayne, State of New York.'"

" This bill proposes amendments to the village charter of Savannah, authorizing the board of trustees to raise money by tax for the purchase of a site for an engine-house, for the erection thereof, for the purchase and repair of fire apparatus, and to organize fire companies.

All these powers are already conferred upon the trustees of this village by existing statutes.

Chapter 308 of the Laws of 1884 provides that 'The trustees and officers of any village of this State created by special charter shall have and possess the same powers as are prescribed in any general act for the incorporation of villages within this State, except as such special charter may be in conflict with any provision of said general acts.' The general act for the incorporation of villages (Laws of 1870, chapter 291, title III, section 3, subdivisions 11 and 12 and section 5) fully confers upon the trustees of the villages incorporated thereafter all the powers specified in this bill, and by virtue of the act of 1884, the same powers are conferred upon the trustees of the village of Savannah. This bill is, therefore, wholly unnecessary."

The bill was not passed over the veto.

May 23. To the Senate:

Veto of a bill entitled "An act establishing a ferry from Barber's Point in the town of Westport, in the county of Essex, across Lake Champlain."

" This bill declares that it shall be lawful for Loyal W. Spaulding, his heirs or assigns, to keep and maintain the ferry described in the title, and prohibits any other person from keeping or maintaining a ferry within one mile north or south therefrom.

The only thing to prevent this being legally done is the Constitution of the State. The second veto of Governor Tilden was in disapproval of a similar bill, in which he says:* 'It seems to me plain that this bill is in conflict with the provisions of section 18 of article III of the Constitution, which prohibits the Legislature from passing any private or local bill granting to any private corporation, association or individual any exclusive privilege, immunity or franchise.'

The Court of Appeals has repeatedly confirmed the doctrine of Governor Tilden in this respect. In the Matter of Union Ferry Co., 98 N. Y., at p. 151, the court, per Rapallo, J., says: 'The most familiar instances of grants of exclusive privileges or franchises are to be found in acts authorizing the establishment of ferries, toll bridges, turnpikes, telegraph companies and the like, as in case of the Cayuga Bridge Company, which provided that it should not be lawful to erect any bridge or establish any ferry within three miles of the place where the bridge of the company should be erected, or to cross the river within three miles of the bridge without paying toll (citing cases). The charter of the Mohawk Bridge Company, which prohibited ferries across the river one mile above and one mile below the bridge (citing cases).'

This doctrine was again recognized by the Court of Appeals in Power *vs.* Village of Athens, 99 N. Y. 592.

A bill so clearly unconstitutional ought not to be approved."

The bill was not passed over the veto.

May 23. To the Senate:

Veto of a bill entitled "An act to enforce collection of taxes levied in the county of Madison."

"The object of this bill is to transfer from the Comptroller to the treasurer of Madison county the power to sell lands therein for unpaid State and county taxes. More than fifty special acts have been passed, at various times, in this State relating to similar powers to the county treasurers of more than twenty counties. If it is desirable to change the general policy of the State in this respect, a uniform law should be adopted for all the counties excepted from the Comptroller's jurisdiction. In a matter of so much importance as the title to lands sold for taxes, an examination of a different set of statutes for each separate county should not be made necessary.

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* *Ante*, vol. 6, p. 813.

A great need of the State is uniform general laws on all general subjects, instead of varying special laws, however meritorious each by itself may be."

The bill was not passed over the veto.

May 23. To the Assembly:

Veto of a bill entitled "An act relating to the payment of fees to county treasurers and the comptroller of the county of New York, who may have been elected or appointed prior to the passage of chapter four hundred and eighty-three of the Laws of eighteen hundred and eighty-five, entitled 'An act to tax gifts, legacies and collateral inheritances in certain cases.'"

"It is the usual policy of the State not to increase the fees and allowances of public officials during the term for which they have been elected, even though the Legislature imposes additional duties upon them. That course follows the spirit of the Constitution,[1] and the law of 1885 — proposed now to be amended — was framed in accordance therewith, and there seems to be no good reason for changing it.

The Comptroller of the State, who is its chief financial officer, objects to this bill upon the ground that there is no sufficient reason for allowing such fees to officers elected either before or after 1885, and I am informed that a bill to abolish these fees altogether is now before the Legislature, and, therefore, there seems to be no propriety in approving this bill at the present time."

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[1] Const. 1846, art. 3, § 18.

The bill was not passed over the veto.

May 23. To the Assembly:

Veto of a bill entitled "An act in relation to the State ditch in the town of Mentz, in Cayuga county."

"I am advised by the State Engineer and Surveyor and the Superintendent of Public Works that the injuries sought to be remedied by this bill are due to the condition of a natural water-course with which the State has never interfered, and with which it appears the State has nothing whatever to do."

The bill was not passed over the veto.

May 23. To the Assembly:

Veto of a bill entitled "An act to provide for constructing a sewer under the Cayuga and Seneca canal in the village of Waterloo, county of Seneca, and to make an appropriation therefor."

"While this bill merely authorizes the Superintendent of Public Works to perform the proposed work, it nevertheless prescribes the particular method of performance. The State Engineer and Surveyor is of the opinion that a different method will be more effective and economical, and that the work should not be performed in the manner required by this bill."

The bill was not passed over the veto.

May 24. To the Assembly:

Veto of a bill entitled "An act to incorporate the Provident Industrial Insurance Company."

"This bill is objectionable for the reason that it provides for the incorporation of a joint-stock life insurance company by special act, while there is already on the statute books a general act, chapter 463 of the Laws of 1853 and the amendment thereof, providing for the incorporation of joint-stock companies for the transaction of the same kind of business.

The bill provides for the incorporation of this particular company with a capital of twenty-five thousand dollars, which is only one-fourth of the minimum amount of capital required for the incorporation of a joint-stock life insurance company under the general act.

It is urged in behalf of the bill, inasmuch as it contemplates the class of insurance business known as 'industrial insurance'—policies for comparatively small amounts (in this particular case limited to not exceeding five hundred dollars in any one policy), on premiums of a few cents collected weekly or at other short intervals, that this furnishes a reason why this class of companies should be allowed to incorporate on a smaller capital than ordinary life insurance companies.

On the other hand, the actuary of the Insurance Department, on inquiry, expresses the opinion that the minimum one hundred thousand dollars named in the general act is as small a capital as any joint-stock life insurance company can be organized upon in this State, compatible with safety to the insured and successful business by the company; that industrial life insurance companies now doing business in this State under the general act, as a matter of business, do in fact limit their policies to amounts ranging generally from one hundred and five hundred dollars; that the policies of the largest company of this class in

America, having over a million policy-holders, average only about one hundred and four dollars each in amount; that the ratio of expense to income in this class of companies for the first few years of their existence is much greater than is the case with ordinary life insurance companies, and, therefore, that there is more occasion for increasing the minimum of capital stock with which to launch this class of companies than to decrease it below the amount named in the general act.''

The bill was not passed over the veto.

May 24. To the Assembly:

Veto of a bill entitled "An act to amend chapter five hundred and seventy-six of the Laws of eighteen hundred and eighty, entitled 'An act to ascertain by proper proofs the citizens who shall be entitled to the right of suffrage in cities of sixteen thousand inhabitants or upwards, and in towns and villages abutting against the boundary of any such cities,' and to amend chapter five hundred and eight of the Laws of eighteen hundred and eighty-three amendatory thereof.' "

'' This bill proceeds upon the theory that the majority of voters are dishonest. For the sake of possibly preventing a few dishonest men from voting, this bill would so add to the inconvenience and to the expense of registering, as to practically disfranchise many honest voters.

By the law as it now stands, the boards of registry are trusted to take the poll-list of the previous election in their district as the basis of their work, and from personal knowledge of their neighborhood changes, and from such information as they may deem reliable, to complete a preliminary list of all persons entitled to vote in their election district. This list they are required to post conspicuously for three weeks before each general election. By this method the local committees and all others interested are able to scan the list, and to bring such errors as they may discover to the notice of the board at their second meeting on the Friday before election. At this second meeting the board are authorized to correct all errors discovered in their former list, except that they can only add new names upon the personal appearance of the parties whose names had been omitted.

But the advocates of this bill place no more confidence in the officers than in the voters. By this bill the board of registry are not allowed, at any time, to place the name of a single person upon the registry list from their personal knowledge, no matter how long they may have known such person as a resident and voter in their district. Before every general election the board would be compelled by this bill to begin their registry anew, with an absolutely blank sheet. No previous voting list, no acquaintance with their neighbors, will allow them to enter a single name thereon. Their first meeting is still to be held three weeks before the election, and no one who may be too ill to attend in person, or who may be absent from his home on two particular Tuesdays and one Wednesday within that three weeks, or who may, through negligence or forgetfulness, omit to appear on one of those days, will be allowed to go upon the list or to vote at the following election. Under modern business methods, many men are continuously away from their homes for more than three weeks at a time, and are able only at much expense and inconvenience to return for the particular day of election. Under the present law, the members of the board of registry can be safely trusted to have personal knowledge of the great majority of such instances, and, upon their own motion, to enter such names upon their list. Under the proposed law this could not be done. This bill adds no substantial safeguards against fraudulent voting; it does add seriously to the difficulties and inconveniences of honest voting.

While this bill requires three meetings of the board within the three weeks before election, instead of two as at present, the last meeting for final revision is changed from Friday to the Wednesday before election. At first the last meeting was on Saturday, the present law amended it back to Friday, and this bill takes it still farther back. This merely increases the injustice and hardship of the bill without serving any good purpose whatsoever. Such a change merely tends to keep voters generally off from the registry list, as though the object were chiefly to reduce the list by catching out as many sleepy voters as possible.

The present statute has been substantially in force for fifteen years. Its errors have been detected by experience and corrected by various amendments. Upon the whole it has worked satisfactorily. No law can absolutely prevent fraudulent voting without preventing all voting. This bill has gone too far in the latter direction. The chief dangers at present to the integrity of the ballot are, for that matter, of a different nature from those sought to be remedied by this bill.

I have called attention only to the main features of the changes proposed by this bill, without speaking of its incidental defects and inconsistencies, and accidental errors. I will mention only one of the latter. The copy of the preliminary list to be prepared at the first meeting of the board, which by the present law is to be posted in the *room* where the board holds its meetings, is by this bill to be posted in the *town* where the board meets. Other copies of the preliminary list are to be filed only in 'the office of the town clerk of the town, and in the office of the village clerk of the village in which such election district may be.' Under the statute as amended by this bill no provision whatever would remain for either posting or filing any list in cities, or in any way rendering the list accessible to any person outside of the members of the board until the list should be finally completed and no further corrections be possible.

This bill is professedly framed in the interest of more honest elections. I am aware that to express disapproval of its methods renders one liable to the false charge of disapproving its intentions. But I do not believe the practical workings of this bill would be in the interest of more honest elections. I believe it would disfranchise more honest voters than fraudulent ones. The accidental error I have mentioned would alone necessitate my disapproval of the bill. But I prefer to place my disapproval upon the main features of the bill, which would certainly defeat rather than promote the objects of its framers and advocates.

The object of registration laws is to assist in determining who are entitled to vote, and to facilitate honest voting as well as to obstruct fraudulent voting. The path to the ballot-box should be made as free as possible to every honest voter, and should be hedged about with such obstructions only as shall tend to sift out and exclude illegal voters, and not merely tend to reduce the registry list without any sifting process."

The bill was not passed over the veto.

May 25. To the Assembly:

Veto of the following items in the supply bill, chapter 460:

"'For the Comptroller, for compensation of persons reporting an evasion of chapter five hundred and forty-two of the Laws of eighteen hundred and eighty, and the acts amendatory thereof, by any association, corporation or joint-stock company liable to taxation thereunder, and for assisting in the collection and preparation of evidence, and in the prosecution and trial of suits for such taxes as authorized by chapter two hundred and sixty-six of the Laws of eighteen hundred and eighty-six, and for postage and other necessary expenses incurred under said acts, the sum of ten thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

This item is based upon an act passed last year, which I did not sign, but allowed to become a law without my approval. The approval of this appropriation would substantially inaugurate a State system of informer's fees, which I am satisfied would not be for the public good. A like system practiced at one time by the general government fell into disrepute, and after a time was universally condemned, and in the end abandoned. The State of New York has a sufficient number of well-paid officials to make such action as that contemplated by this item undesirable.

'For deficiency in appropriations for expenses of legislative committees, fees of counsel, stenographers, accountants, printing of testimony and other contingent expenses of the Legislature of eighteen hundred and eighty-five, and eighteen hundred and eighty-six, and for paying the expenses of legislative committees, fees of counsel, stenographers, accountants, printing of testimony and other contingent expenses of the Legislature of eighteen hundred and eighty-seven, the sum of thirty-five thousand dollars, to be paid, in the case of legislative committees, on the certificate of the chairman of the respective committees and of the presiding officers of the respective houses, and in other cases, on the certificate of the presiding officers and clerks of the respective houses, and in all cases upon the audit of the Comptroller.'

This item is objected to and not approved.

It is utterly impossible to tell what is the amount of deficiency for 1885, or for 1886, or how much is to be spent for 1887. 'Expenses of legislative committees, fees of counsel, stenographers, accountants, printing of testimony, and other contingent expenses of the Legislature' are brought together in one convenient paragraph, covering thus a multitude of items and three years of time. If not in letter, certainly in spirit, this violates that section of the Constitution which requires that an appropriation act shall distinctly specify the object to which the appropriation is to be applied.[m]

It is presumed that the chief application is to be for counsel fees and expenses of legislative investigating committees. Contrary to the law which prevails in the administration of the established departments of the State government — that no expenditure beyond an appropriation can be made — these committees are accustomed to proceed in the most extravagant manner, and, consisting as they generally do of a large proportion of lawyers, are, nevertheless, in the habit of employing many and high-priced counsel to assist in their various investigations, and apparently without stipulation or limit as to the charge to be made for counsel fees. Some general law upon this subject would seem most advisable.

This somewhat new scheme of partisan investigating committees has assumed most objectionable and extravagant shape this year, and for the great sums of money now asked from the public treasury not a single beneficial result to the State at large is shown. If the expenses incurred by these committees, in the absence of an appropriation, are proper, it is at least no great hardship that the chairmen thereof should be compelled to show detailed statements of the directions in which this share of the taxes raised by the people of the State is to go. Not far from $500,000 has been appropriated for like purposes within the last few years, and it seems time to demand stricter compliance with the plain spirit of the Constitution.

'The sum of thirteen thousand dollars, or so much thereof as may be necessary, remaining in the treasury unexpended of the sum of sixty thousand dollars, appropriated in chapter four hundred and thirty-three of the

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[m] Const. 1846, art. 7, § 8.

Laws of eighteen hundred and eighty-six, "for the expenses of legislative committees, fees of counsel, stenographers, accountants, printing of testimony and other contingent expenses of the Legislature of eighteen hundred and eighty-two, eighteen hundred and eighty-three, eighteen hundred and eighty-four and eighteen hundred and eighty-five," is hereby reappropriated and made applicable to the payment of like expenses for the Legislatures of eighteen hundred and eighty-six and eighteen hundred and eighty-seven, and to the payment of such fees of counsel which remain unpaid out of the sum of fifty thousand dollars, appropriated by said chapter four hundred and thirty-three.'

This item is objected to and not approved.

The same reasons given in objection to the previous item apply and are presented to this.

'For the services and expenses of a civil engineer and his assistants in taking the measurements of the Assembly chamber and other portions of the Capitol, to ascertain possible defects in its structure, pursuant to resolution of the Assembly, passed February fourth, eighteen hundred and eighty-seven, the sum of one thousand and eighty dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

The amount named, it is believed, is grossly disproportionate to the value of the services performed. The work should have been done through the State Engineer and Surveyor, and without extra cost to the State. If the Assembly choose to order work by its individual resolution, the bill therefor should properly be paid from the ample fund allowed for contingent expenses of that body. Besides it ought to be well understood by this time that neither the Assembly, nor the Legislature by joint resolution, can incur an indebtedness for such a purpose against the State.

'For paying the expenses of boxing, transporting and distributing the Code of Public Instruction to the several school districts of the State, under the direction of the Superintendent of Public Instruction, two thousand five hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

The bill for the publication of the Code of Public Instruction not having become a law, this appropriation is not necessary.[a]

'For the Superintendent of Public Buildings, for the alteration of ninety-eight chandeliers and one hundred and twenty-eight brackets on the south side of the Capitol building, so that they may be used for both gas and electric lighting, the sum of seventeen thousand five hundred dollars.'

This item is objected to and not approved.

Until the State is in a condition to complete the Capitol building, I am unable to see the wisdom of making expensive changes in the mere furnishings of the rooms. These proposed alterations can certainly wait another year without any public interest receiving serious injury.

'For constructing cases for books, and for galleries and winding stairs connected therewith in the Senate library room, six thousand five hundred dollars.'

This item is objected to and not approved.

Until the State can afford to complete the Capitol, it hardly seems wise economy to expend $6,500 in making changes in a single small and subordinate room.

'For removing books from the Senate library and rearranging them therein, five hundred dollars.'

This item is objected to and not approved.

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[a] See L. 1887, chap. 672, which became a law on the 24th of June. It appropriated $18,000 for the publication and distribution of a Code of Public Instruction.

The preceding item having been disapproved, no necessity exists for this expenditure.

'For the purpose of removing obstructions and otherwise improving the navigation of the west branch of the St. Regis river and its branches above and south of the village of West Stockholm, public highways for the passage of lumber, logs and other timber, in the county of St. Lawrence, the sum of five thousand dollars, the said work to be done under the direction of the Superintendent of Public Works.'

This item is objected to and not approved.

While the State is in apparently so impoverished a condition that it is unable to complete the Capitol, it hardly seems an appropriate time to enter upon expenditures of doubtful expediency or propriety. To the previous item, similar to this, I have not made objection for the reason that the State has already begun the work therein described, and a further appropriation seems necessary to make fully available the work already done.

'For the State Land Survey, for completing the engrossing and binding of such portions of the records and maps of the Adirondack Survey as shall be desirable for preservation, and for necessary office and field expenses for the State Land Survey, ten thousand dollars, and the Superintendent of the survey shall make a report to the next Legislature which shall contain such portion of such records and maps as shall be deemed desirable for publication. But no part of this appropriation shall be expended upon the State Land Survey until the completion of the engrossing and binding of such records and maps.'

This item is objected to and not approved.

There is no such department known in the laws of the State as the State Land Survey, and there is no such official as Superintendent of said Land Survey. If, by this item, it is intended to appropriate money to be expended by the so-called Superintendent of the Adirondack Survey, it is not deemed a wise expenditure. Up to 1885 there had been appropriated for Adirondack surveys a total of $135,540.99. In the report to the Legislature in 1885, the State Engineer says that no record of importance is filed in his office as the result of this survey, except the protests of his predecessors against its independent existence. The records, if any exist, of the Adirondack and other surveys, should be preserved, but, as was said in the veto of a similar item in 1885, the State Engineer is the proper person to conduct such work, and the appropriation should be given to him, a perfectly competent, responsible and willing official.

Until some well-devised general scheme is adopted, I am opposed to the further expenditure of money by the State for land surveys, and I certainly cannot approve such piecemeal legislation as this item illustrates.

'For printing and binding the fifteenth volume of the Colonial History, as provided in chapter one hundred and seventy-five of the Laws of eighteen hundred and forty-nine, chapter one hundred and sixty-eight of the Laws of eighteen hundred and fifty-six, chapter eighty-one of the Laws of eighteen hundred and fifty-eight, and chapter two hundred and forty of the Laws of eighteen hundred and eighty-five, five thousand five hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

This work has been in progress since 1839, and there has been expended thus far upwards of $212,000, as shown by the records of the Comptroller's office. The contract for printing was made in 1851, and it was evidently expected that completion of the work would speedily follow. In that year it was reported to the Legislature by the

Governor and Secretary of State that, if all the material collected were published, it would probably make ten volumes, but that much of it ought not to be included.

In 1857 Hon. J. T. Headley, Secretary of State, reported to the Legislature that the work was 'poorly compiled,' 'uselessly illustrated,' 'most extravagant in cost,' 'misleading,' 'loosely managed;' that there had been expended so far $168,000, that it would probably cost $2,000 more, that the entire value was not $17,000, and could be better computed by avoirdupois weight than by any standard of literary value, and that 'It seems to have been carried on for the benefit of the printers and to support an editor.'

A somewhat careful examination leads me to think the conclusion reached by Mr. Headley thirty years ago was, to a great extent, correct, and that the controlling reason for its long continuance is the same. Since the report of Mr. Headley about $45,000 have been expended thereon, volumes eleven, twelve, thirteen and fourteen have been published, four more than was thought in 1851 would complete it, and there seems now to be no one competent or willing to state the additional number of volumes that will be needed to complete the work. The work does not seem to be conducted in a business-like or systematic way, but to be carried on more with an idea of furnishing an additional position to be filled, than a valuable addition to the State's published records. Already too many sinecure positions have been foisted upon the State under one pretext or another, and I am unwilling to approve the further continuance of this expenditure until at least the publication is systematized and put in charge of some department which can give definite idea as to the time and expense necessary for its completion.

'For repairs of the hospital ship *Illinois*, five hundred dollars; for painting and repairs of the health officer's residence, at the upper boarding station, two thousand dollars; for repairs of the dock at the upper boarding station, fifteen hundred dollars, and for continuing the sea wall, filling in earth and renewing planking at Hoffman's Island, six thousand dollars.'

These items are objected to and not approved.

Under the existing management of quarantine affairs these appropriations for repairs and renewals are not deemed expedient. The appropriation of ten thousand dollars for maintenance is believed to be amply sufficient, if properly expended, to keep the property of the State in good order. An appropriation of seventy-five hundred dollars for salaries in the quarantine department has also been made, by a previous act, this year."

The items were not passed over the veto.

May 26. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *May* 26, 1887.

"The terms of office of the Health Officer of the port of New York, of the Quarantine Commissioners and of the Commissioners of Emigration expired several years ago. In discharge of a duty imposed upon me by the Constitution, I last year transmitted to the Senate nominations for these several offices. The Senate neither confirmed nor rejected them. Recently, I caused other nominations for the same positions to be transmitted to your honorable body, but as yet no action has been taken thereon.

It is submitted with all proper deference to the Senate that the Constitution does not contemplate that officials whose terms of office have expired, and who fail to receive a renomination therefor at the hands of the Executive, should be maintained in their positions for years thereafter, because of the refusal of the Senate to take action upon proper and worthy nominations of their successors. It is believed that the citizens of the State desire that these offices should no longer be filled by officials whose terms have long since expired, and that the nominations which I had the honor of recently making to the Senate are honest, competent and deserving men, possessing the confidence of the people without distinction of party, and that it is due to the State, as well as to the Executive, and to the dignity and good name of the Senate itself, that some definite action should be taken in reference to these nominations now pending before you.

I, therefore, respectfully ask that you do not finally adjourn without disposing of these nominations to these important positions in some constitutional manner.

DAVID B. HILL."

May 26. The Legislature adjourned without day.

MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

February 25.

Memorandum filed with Assembly bill, Chap. 38, to amend the charter of the city of Oswego. Approved.

"This act makes two important changes in the city government of Oswego. One of them is the abolition of the offices of treasurer and collector, and the creation of the office of city chamberlain. This amendment was suggested last year, and there was no particular opposition to it. There is no city in the State of the size of Oswego but what has such an office, and I am satisfied that this change is in the interest of better government and in the interest of the tax payers. Collectors of taxes will answer for towns, but in cities like Oswego the duties ordinarily performed by a treasurer or collector should be performed by one official like a chamberlain. There seems to be no particular opposition to this amendment at the present time, so far as I can learn.

The other change consists in reducing the number of aldermen in the city from two from each ward to one from each ward. It provides that the aldermen now in office and whose terms do not expire until next year shall be permitted to remain in office for that year, and that no alderman shall be elected at the ensuing charter election. If a reduction of the number of aldermen is to be made, it is better that the aldermen already in office should not be legislated out of their offices, but that the reduction should be made by not electing any new aldermen at the coming election. There does not seem to be much opposition to this reduction, but it is claimed by those who have appeared in opposition to the bill, that the aldermen who are already in office, and who are permitted to serve out their term, are in some way committed against the interests of the city in favor of the Oswego Water-Works Company, and that by reason thereof the interest of the tax payers of the city will not be fully promoted. This is an imputation upon the aldermen already in office, which seems unreasonable. I cannot believe that they are the mere creatures of the water company, and that they will not properly discharge their duties in favor of the city's interest in whatever contract they may make with the water company. If the proposed change is a desirable one, it ought not to be defeated by reason of any mere suspicion which may exist in reference to these aldermen. I am bound to believe that they will subserve the interests of the city properly, and, if not already so disposed, they would not dare to incur the displeasure of the public sentiment of the city.

There are no politics in the bill, as it seems to be approved by men of both parties. It is asked for by the representatives of Oswego county in the Senate and Assembly, and I do not think that the objections urged against it are sufficient to justify me in withholding my approval. I have, therefore, this day approved the bill and append to it this explanation."

February 28.

Memorandum filed with Assembly bill, Chap. 43, relating to the United States deposit fund in Steuben county, which became a law without the Governor's approval.

"The settled policy of the State for some years has been to consolidate and centralize this fund in the State treasury, and thus to avoid losses and mismanagement. That policy I approve. This bill seems to be based upon an opposite policy. In reality, however, it arises from a combination of circumstances not likely to be repeated, and hence the act cannot be referred to as a precedent. For this reason it is permitted to become a law under the constitutional provision." *

March 16.

Memorandum filed with Assembly bill, Chap. 74, changing the site of the Oswego county jail. Approved.

"Chapter 160 of the Laws of 1885, entitled 'An act to provide for changing the site of county buildings,' would seem to obviate the necessity for this act. The evident intent, however, of that law was to provide for cases where it was the purpose to change the site of the county building from one city or village to another. The bill before me is to meet the desire to change the site of the county jail of Oswego county from one block in Oswego city to another close by, and, to avoid the complicated and extended proceedings prescribed by chapter 160 of the Laws of 1885, I am willing to sign a special act for that purpose."

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* Const. 1846, art. 4, § 9.

March 25.

Memorandum filed with Senate bill, Chap. 84, amending consolidation act of New York City, relating to the public health. Approved.

"The attention of the Legislature was called, in my last annual message, to the general subject of the condition of tenement-houses. This bill proceeds with caution in the reforms there suggested, and which were also advocated in detail in the report of the tenement-house committee of 1884–85, upon which this bill is understood chiefly to be based. There were some provisions contained in the measure, as at first introduced, which I think might have remained with advantage. I find also in the bill as passed one or two sections, the wording of which might be improved; but these errors of omission and commission are not serious. Although I am convinced that a much more radical correction of abuses is possible and advisable, I have willingly approved this bill, believing it certainly to be a step in the right direction, particularly as it provides for an annual meeting of the mayor and other city officials to consider this whole question, and to make recommendations which will almost undoubtedly lead to further remedial legislation." [See note 15.]

April 19.

Memorandum filed with Assembly bill, Chap. 179, extending the jurisdiction of the park commissioners of New York City, which became a law without the Governor's approval.

"I cannot resist the impression that this legislation is of doubtful propriety. While it is proper that the jurisdiction of the park commissioners should extend to the parks and also over the streets which immediately border thereon, it seems to me somewhat questionable whether it is wise to commence extending their jurisdiction over other streets simply because such streets may be deemed to connect one park with another.

It is a safe rule to adhere to the policy of keeping all the streets under the jurisdiction and control of the superintendent of public works and the parks under the control of the park department, and to insist that one department should not be permitted to encroach upon the other. I fear that in the future there will be a clamor to place other streets running between Central Park and Riverside Park under the control of the park commissioners, and I imagine that the moving cause for the present legislation is real estate speculation, and that the scheme is not really for the benefit of the city, but principally for the advantage of real estate owners on the streets affected by the bill, and that it will afford a pernicious precedent. I hope, however, it may prove that my suspicions are unfounded.

Last year a similar bill, which remained in my hands at the adjournment of the Legislature, was not approved, but the Legislature in its discretion having again passed the measure, and this year it being favored by the local authorities and not opposed by the superintendent of public works, and no particular opposition having been manifested toward it, and many good citizens appearing to favor it, I have with some reluctance concluded to permit the same to become a law without my signature."

May 3.

Memorandum filed with Senate bill, Chap. 270, to regulate the price of illuminating gas in Brooklyn. Approved.

"It would have been preferable if, instead of the passage of this measure regulating the price of gas in Brooklyn by act of the Legislature, there had been passed a general law providing for the creation of a State gas commission, whereby the price of gas in Brooklyn, as well as the rest of the cities of the State, could be determined by a fair and impartial tribunal after an investigation of all the facts and a hearing of all the parties interested. That would have been a more satisfactory disposition of this matter. [See note 13.]

The practice of annually appealing to the Legislature in such matters should not be encouraged, and the price of gas should be determined by a commission. But this measure having passed the Legislature with great unanimity, and the propriety of some reduction in Brooklyn being so clear, I have felt it incumbent upon me to approve this bill.

If it shall hereafter be demonstrated that any injustice has been done any of the gas companies in Brooklyn, I will next year cheerfully recommend that the wrong be remedied in some shape.

Having last year approved a bill fixing the price of gas to be charged in New York city, I cannot consistently withhold my approval from this measure. I trust that next year a State commission bill will be enacted, thus avoiding the necessity of further legislation of this character.

The price of gas is very high in Brooklyn, when compared with other large cities, and this fact has had great weight in influencing my decision on this bill. The people seem entitled to a reasonable reduction, and this bill is apparently the only relief available at the present time."

May 18.

Memorandum filed with Assembly bill, Chap. 366, to regulate fishing off Cape Vincent, Lake Ontario, which became a law without the Governor's approval.

"So far as I understand the object of this bill, it does not meet my entire approval. It seems to unduly sacrifice the interests of business fishermen for the sake of preserving game fish for sportsmen. But for over a year past I have made it a rule to refrain from interfering with the many local game and fish bills passed by the Legislature, because of the utter impossibility, owing to my other official engagements, of fully comprehending the circumstances of the locality to which they apply.

While I cannot express my approval of this bill by signing it, I am reluctantly compelled, for the reasons aforesaid, and by my necessarily imperfect knowledge of the local situation, to adhere to my former policy, and I, therefore, allow this bill to become a law without my signature.

In such matters as local game and fish laws the Executive must rely upon the representatives in the Legislature from the locality directly interested, to correctly express the wishes of their constituents, and upon the Member and Senator from the district affected must mainly rest the responsibility for legislation of this character."

May 23.

Memorandum filed with Senate bill, Chap. 431, amending the consolidation act for the city of New York relating to the Comptroller and fire insurance. Approved.

"From such examination as I have been able to give to this bill during the limited time at my disposal, I have concluded to approve it. There are hundreds of other measures awaiting my attention at this late stage of the session, and my consideration of this bill has necessarily been hasty and somewhat imperfect.

While approving the measure because I believed its general features have much merit, yet it is not improbable that a better-regulated and more permanent measure, and possibly one more equitably adjusted toward all whose interests are affected by it, might be framed, and if any such measure shall hereafter be presented, then the approval of this will not be deemed sufficient to prevent a reconsideration of the whole subject."

May 26.

Memorandum filed with Assembly bill, Chap. 479, entitled "An act prescribing the period in each year during which and the terms under which racing may take place upon the grounds of associations incorporated for the purpose of improving the breed of horses, and suspending the operation of certain sections of the Penal Code," which became a law without the Governor's approval.

"The Constitution[*] permits the Executive to dispose of bills before him in three ways:

First. By an express approval, evidenced by signing the bill within ten days after its receipt by him:

Second. By a veto thereof:

Third. By neither approving nor vetoing it, but by not returning it to the Legislature within ten days, thus permitting it to become a law without his signature.

I have pursued the latter course in reference to this bill for these reasons:

First. The bill involves no constitutional question.

Second. It involves no political question about which parties are divided.

Third. It had a full, fair and deliberate discussion in both houses and in the public press for weeks before its passage in the Legislature.

Fourth. It presents a question upon which public sentiment seems to be greatly divided, and one peculiarly within the province of the Legislature to determine.

Fifth. It regulates and restrains the selling of pools by permitting such sales, during a limited period and at certain places only, and by prohibiting under increased penalties such sales at all other times and places, and imposes for the privilege a license fee or tax which is uniform throughout the State.

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[*] Const. 1846, art. 4, § 9.

All laws must finally rely for their enforcement upon the support of public opinion. It is conceded that public opinion has not supported and enforced the present law which attempts to prohibit pool selling altogether. In most localities the present law has been practically a dead letter. It is urged, and with much show of reason, that this bill, which presumably keeps pace with public opinion, will be generally enforced, and will, in its practical workings, actually diminish the total quantity of pool selling within the State.

No one contends that the amount of pool selling under the proposed law will be greater than before. The opponents of this bill rest their argument solely upon the impropriety of licensing an evil. Whether it is wiser for the State to regulate and restrain — by license laws which can be enforced — and thus apparently tolerate an evil which cannot be eradicated, or to pass futile prohibitory laws against the evil, is an old question upon which moralists disagree, and upon both sides of which much can be said. The only practical test of such a question is actual experiment. The Legislature upon which body must mainly rest the responsibility for discretionary legislation of this character — after mature deliberation, has chosen to make trial of the same policy with reference to pool selling which this State has so long pursued with reference to sales of intoxicating liquors.

Under these circumstances — and in view of the fact that I have so frequently had occasion to differ with the Legislature, upon the propriety of its action upon many measures this year,— I do not feel called upon in this instance to interfere to prevent this new method from receiving a trial. But in allowing this bill to become a law, I neither commit myself to the policy of its advocates, nor to that of its opponents, but shall hold myself ready to act upon future legislation of this nature, in such manner as the logic of events may prove to be most conducive to the public welfare."

This act was sustained in Reilly v. Gray (1894), 77 Hun, 402; Ludington v. Dudley (1894), 61 N. Y. S. R. 115. See *contra,* Irving v. Britton (1894), 8 Misc. 201.

THIRTY-DAY BILLS.

May 31.

Veto of Senate bill entitled "An act to tax sales of beverages in certain cases." [32]

"No hearing upon this bill has been applied for, and none seems to be necessary. It was not passed with any expectation that it would ever become a law, and it can be readily disposed of.

The measure concededly violates every just principle of taxation enunciated by me in my veto of the 'Crosby Bill,' (so-called), and hence it was well known that its approval was impossible.*

It purports to be a revenue measure, and not one for reform or to promote temperance. Its ostensible object is to provide means to support the State government, and, therefore, moral considerations cannot, with propriety, be urged in its behalf. It does not assume an intention or desire to restrict or reduce the number of licensed places, but merely to raise taxes from the sales of liquor, and the more licenses there are granted the greater will be the revenue. The bill is, therefore, to be considered and discussed purely as a financial measure, and not one intended for the promotion of temperance.

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[32] The excise act of 1892, chapter 401, like its predecessors, authorized a higher license fee in cities than in towns. The liquor tax law of 1896, chapter 112, prescribed a tax on granting a certificate authorizing the sale of liquor, which tax varied in amount according to the population of the locality in which the traffic was to be carried on.

In People ex rel. Einsfeld v. Murray (1896), 149 N. Y. 367, the court, considering this feature of the law said: "Whether the law should be uniform in its application to the cities of the State, or whether a discrimination should be made in the excise tax as between New York and any other city, and the extent of the discrimination, was in the discretion of the Legislature."

* *Ante,* p. 355.

As a revenue measure the bill is objectionable for these reasons:

First. The tax is not uniform throughout the State. The bill, among other things, imposes a tax of four hundred dollars upon places having first-class licenses in the cities of New York and Brooklyn, while in the other cities of the State the tax varies from two hundred dollars to fifty dollars upon the very same kind of places. The tax is based according to resident population, rather than upon the amount of business done. There is no pretense of equality in its imposition. At the crowded fashionable summer resorts in the country — the places upon the lakes, in the mountains and at the glens and springs, where vast profits are made in the sale of liquors — the taxes would be but trifling; while the great constituencies of New York and Brooklyn are compelled to pay the highest rates. Taxes should be equal and uniform throughout the State. The United States liquor license tax is based upon that principle, and is the same everywhere. In Ohio, Michigan, Texas and Illinois the State liquor tax is uniform in all parts of those States. Yet this bill is purposely made unlike the United States law or the law of these other States, so that the Executive could not consistently approve it. The object seems to have been more to embarrass the Executive than to promote temperance legislation or to raise revenue by fair and equitable means.

Second. The bill provides that the taxes raised shall go into the State treasury, rather than into the treasury of the localities where the licenses are granted. These license taxes should properly be applied for the reduction of local taxation. No good reason can be urged why one locality granting a number of licenses should be compelled to share with another locality or with the State at large any portion of the public tax imposed on account of the granting of such licenses. Each locality should have the full and entire benefit of its own local taxation. The State does not need to insist upon such compulsory and unfair division as is proposed. Home taxation for home purposes presents the true principle.

The weight of State taxation is slight, while local taxation is burdensome and needs the relief which this revenue would furnish it. If the Legislature sincerely desired to raise additional revenue for the State, it could have passed the admirable measure for the taxation of corporations recommended by the Comptroller, whereby State taxation could be materially reduced — but the bill was defeated. The taxpayers of the State would have appreciated the relief afforded by so just, practical and equitable a measure — but the Legislature would not pass it.

Whatever taxes the liquor traffic ought reasonably to bear, whether imposed in the shape of license fees or otherwise, should go into the local rather than the State treasury. As well might it be proposed to pay the license fees for hacks, carts, places of amusement, sidewalk permits and all other fees for privileges of like character into the State treasury, instead of the municipal treasury of the locality interested, as to attempt to do what this bill proposes.

If liquor taxes should not be permitted to remain at home for use in making local improvements and paying expenses of local government, then the State might as well take and appropriate the rents which cities receive of ferries, piers and bulk-heads, and street railroad franchises and other local revenues.

In Ohio all the proceeds of its liquor tax are paid into its county treasuries. In Michigan, Illinois and Minnesota, all such taxes are paid into the city, town and village treasuries, and even under the recently enacted law of Pennsylvania it is required that four-fifths of the revenue derived from liquor license taxes shall be paid into the local treasuries.

But this proposed law is not modeled after the statutes of other States, and is glaringly unjust to particular localities. In brief, it taxes two-thirds of the State for the benefit of about one-third. It is partial, crude and unprecedented in its provisions. The people do not want any such measure. The independent press of the State is opposed to it. It was conceived in political expediency, born of political hypocrisy, and has had its growth in rank injustice and in the utter violation of every correct principle of taxation.

This legislation is a fair sample of all the alleged temperance legislation of this winter. 'The art of how not to do it' could not be more conspicuously illustrated, and the whole purpose seems to have been to hoodwink and deceive the honest temperance sentiment of the State, without, in fact, doing any thing to aid the cause of temperance."

June 24.

Veto of an item in Senate bill, Chap. 667, making appropriations for certain expenses of government.

"'For the Comptroller to pay for services of counsel to the committee on taxation and retrenchment of the Senate, fees of stenographers and witnesses, traveling expenses and stationery therefor, during the years eighteen hundred and eighty-six and eighteen hundred and eighty-seven to the close of the present session of the Legislature, pursuant to resolutions of the Senate passed in eighteen hundred and eighty-six and eighteen hundred and eighty-seven six thousand dollars, to be audited by the Comptroller.'

This item is objected to and not approved.

The employment of counsel and stenographers by legislative committees from time to time, and especially during the recess of the Legislature, is an expensive and unsatisfactory system, and inevitably leads to abuses. Lawyers and stenographers are apt to solicit such employment, and thus induce committees to make engagements which their own good sense repudiates. It is possible that such services have been honorably engaged and performed in good faith. In this particular case no intimation to the contrary is intended to be made, and individual injustice may result from non-payment for the services rendered. But the Executive has no way of checking such loose methods and of enforcing the adoption of a more regular and economical system except by refusing Executive approval of appropriations for the payment thereof. The results of the work of this Senate committee and its counsel, as shown in the crude, imperfect and ill-digested legislation of the past winter, do not justify the expenditure of the large sum appropriated by this bill therefor. It is understood that this committee proposes to continue its sittings during the present recess with similar employments. In my judgment this is a wholly unnecessary proceeding, and I know of no more effective method of expressing my disapproval thereof than by striking out this item."

June 24.

Memorandum filed with Assembly bill, Chap. 679, to regulate the sale of liquors in quantities of five gallons. Approved.

"This bill prohibits the sale of liquors, wines, ale or beer in quantities of five gallons or upwards, in those cities, towns or villages wherein the local authorities do not grant a single retail license.

The bill is defective in that it should have been passed as an *amendment* to the general excise law of the State (Laws of 1857–1870) rather than as a distinct and independent act. But the Legislature having adjourned, and there being now no opportunity for correction, I am not disposed in this instance to insist upon this technical, though entirely proper objection. The bill passed the Legislature with substantial unanimity, and seems to be the only temperance legislation of the recent session of any particular merit.

Aside from the question as to the propriety of the form of the act, there can be in other respects no reasonable objection urged to the measure. It carries out the principle of local option. It is in accordance with the doctrine of home-rule. It permits each locality to determine for itself whether there shall be any wholesale as well as retail liquor selling within its borders.

Under existing laws the selling of liquors in quantities of five gallons and upwards is not regulated or prohibited, nor is any license required therefor. This bill merely changes such laws by prohibiting wholesale liquor selling in those localities only where there are no licenses, whatever, granted. It seems reasonable that in those places where the temperance sentiment is so strong that no licenses for retail liquor selling are desired to be granted, that they should also have the privilege and option of forbidding sales by the wholesale, which is the purport and effect of this bill.

The measure applies to the whole State and is uniform in its operation. It does not make any unfair discriminations. It recognizes the democratic principle that the people of each locality may regulate their own local concerns in their own way, and affirms the theory of local self-government in reference to excise as well as other matters. Neither does it do any injustice to any interest that requires protection. It does not assume to divert any revenues which properly belong to the locality affected, nor does it seek to transfer such revenues to the State, which would not be appropriately entitled to them, but leaves undisturbed all existing provisions in reference to the granting of licenses.

It may not be inopportune in this connection to suggest that if all excise legislation attempted during the past winter had been based upon the fair, equitable and salutary principles recognized in this measure, there might have been something accomplished in behalf of temperance, good government and true reform. When undertaken in the right spirit, and not merely for the accomplishment of partisan purposes, there is no substantial difficulty in framing just and proper, as well as liberal excise laws, which shall afford ample security to every interest, and at the same time recognize the growing sentiment in favor of more effectively checking intemperance and restraining its evils. It is needless to suggest that such laws should be fair and equitable in their provisions and uniform in their operation. They should provide that licenses should be granted by the local authorities, and not otherwise, and all the revenues derived therefrom — whether called fees or taxes, or by whatever name they may be called — should belong to the localities under whose authority the licenses are granted. The sums exacted should be reasonable in amount so long as the granting of licenses prevails as the general policy of the State, and the minimum license fee fixed by statute should be uniform, while the maximum sum, if not also definitely fixed (and unless it be found impracticable and less satisfactory to have the same based upon the amount of business done and graded proportionately, which would surely always render it fair and equitable) might then be left to the discretion of the local authorities everywhere, thereby exemplifying the principle of home-rule, and enabling any locality desiring to impose a higher license fee than the uniform minimum one, to have the privilege of doing so. Thereby the policy of local option is sustained, the principle of home-rule is illustrated, and the responsibility for a moderate or a high license is thrown upon each locality which is to be benefited, injured or affected by the course which it itself adopts. Such legislation, if carefully and intelligently framed, would, it is believed, prove reasonably satisfactory, and while violating no just policy or proper principle of taxation, would enable public sentiment upon the liquor question to manifest itself in accordance with the desires of a majority of the people of each community.

This measure, so far as it goes, is in substantial accord with the general principles herein and heretofore enunciated, and I have no hesitation in approving the same."

June 25.

Memorandum filed with Senate bill, Chap. 695, the Poughkeepsie Bridge Bill. Approved.

"There seems to be a widespread misapprehension as to the provisions of this bill. It is not a measure authorizing the original construction of a bridge over the Hudson river at Poughkeepsie. Such a bridge was authorized to be constructed by an act of the Legislature passed in 1871, and the company then incorporated is now engaged in its erection. By the terms of the original act (and the amendments thereto since made) the bridge was required to be fully completed on or before January first, 1888. The proposed act simply extends the time for such completion for one year longer, to-wit: until January first, 1889. It contains no other provisions.

The question of the propriety of originally authorizing the construction of such a bridge is not properly before me. The Legislature years ago duly authorized its erection, and the bridge company has proceeded in good faith to construct it, having already expended over two millions of dollars, and fifteen hundred workmen are now engaged in the work. It is conceded that there is a fair prospect that the bridge may be completed before January first, 1888, and that no further time may be actually needed, but, for fear of accidents and to insure a better construction, the company desires the short extension provided for in this bill.

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While this bill follows in part the suggestions then made, it wholly disregards one of the essential elements upon which such a tax can be justified, to wit: that the tax imposed should be equal in its operation. It does not impose 'a percentage tax, graded in proportion to the amount of the operations,' but imposes upon 'bucket shops' in New York and Brooklyn a tax of three hundred dollars a month, upon those in Buffalo a tax of one hundred and fifty dollars a month, and upon those in all other places a tax of seventy-five dollars a month. This tax is exacted irrespective of the amount of business transacted or profits realized. It is a tax upon an occupation, and yet it does not assume to impose an equal burden upon all those pursuing it wherever they may happen to reside. It discriminates against those residing in certain cities, and is thus partial, unfair and unjust in its operation. A State tax upon the occupation of a lawyer, a plumber, a minister, a brewer or a merchant, if not based upon the amount of business transacted, or net profits or salary earned, or otherwise equitably graded, but imposed simply upon the occupation itself, should be of the same amount everywhere.

It was upon this same just principle that occupations were taxed during the war by the Federal Government, and were equal everywhere and in every place, regardless of population. The present Federal liquor tax and tobacco tax are the same in every part of the State and Nation — city and country alike — and this bill should have followed the same equitable rule. An occupation in a large city is not necessarily more lucrative than a similar one in the country. If the receipts are usually larger in the former, the expenses are proportionately greater. To impose or adjust a tax upon an occupation based solely upon the amount of the population of the place where it is carried on is exceedingly improper and wholly unsatisfactory. To assert that such a tax is equal is merely a speculation. It is liable to be grossly unjust. There should exist a reasonable certainty that taxes are uniform and equal. At least there should not exist in the statute imposing them glaring evidences of their probable inequality. The author of the bill admitted, in his argument before me in its behalf, that it was not urged upon moral grounds, but purely as a revenue measure. In his printed brief he also states: 'It is not claimed that the measure is exactly just.'

It is conceded that the bill is liable in the respects mentioned to the same objections which were urged against the 'Crosby' and 'Vedder' bills, so-called. Yet the Legislature, knowing of these valid and unanswerable objections, and well knowing that it could not consistently receive Executive approval, insisted upon its passage. It was a perfectly simple and easy task to have amended the bill, relieving it from these objectionable features, and making the tax imposed a uniform and equal one throughout the State. There could have been no reasonable criticism offered against such a bill, and I would have cheerfully approved it."

June 25.

Memorandum filed with Assembly bill, Chap. 698, for a public market in Albany. Approved.

"The situation seems to require the approval of this measure. The original bill for the purchase of a market-site was not approved by me, but became a law without my signature. It was before me for ten days awaiting action, but not a single citizen or taxpayer appeared in opposition to it, and, under such circumstances, I permitted it to become a law. Since then a site has been duly selected, and this bill simply provides for the expenditure of an increased amount of money deemed necessary to procure additional land admitted to be needed.

A public hearing was given on the bill, and at the request of both sides it was postponed for further consultation and to await some contemplated legal proceedings. Since then

I have heard nothing of the matter excepting the receipt of certain resolutions from a committee of citizens in opposition to the bill, but no further hearing has been requested.

The mayor of the city thinks the bill a necessity under all the circumstances and requests my approval. I have had but little time to consider this matter and I am forced to rely largely upon the judgment of the mayor, and believe it is my duty to approve the bill.''

June 25.

Veto of Assembly bill entitled "An act in relation to the licensing of persons to teach in the public schools of this State." [33]

''This bill provides for the licensing of teachers by the State Superintendent of Public Instruction instead of the local school authorities as now provided by law. The present system has existed for many years, and if so radical a change is to be made the measure should be most carefully framed.

One serious objection to this bill is that while it purports to be a State measure, applicable to all the schools of the State, it substantially exempts the cities of New York and

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[33] The vetoed bill contained detailed provisions relative to examinations for teachers' certificates, and among other things required the State Superintendent to establish a system of uniform examinations of teachers, such examinations to be held simultaneously in the various districts and cities subject to the act, and to be conducted by the school commissioners or city superintendents. These local officers might require additional examinations as to the moral character and general qualifications of candidates, and might reject candidates, who were found disqualified in these respects. Certificates were to be issued by the State Superintendent. The act did not primarily apply to cities containing a population of more than 400,000, according to the census of 1880, but such cities were authorized to avail themselves of the provisions of the common school law of 1864, chapter 555, as amended in 1875.

Chapter 567, passed in 1875, authorized the State Superintendent to issue teacher certificates after examinations to be conducted under his supervision by local school officers. Subsequent provisions on this subject may be found in the Consolidated School Law of 1894, chapter 556, title 1, section 10, and in the act of 1895, chapter 1031.

Brooklyn from its provisions. No good reason exists why, if those cities are to be exempted, the other cities of the State should not also have a like exemption. There are some arguments why cities should not be included in the bill at all, and why its provisions should only apply to the schools of the rest of the State which are more intimately and directly under the jurisdiction and control of the State Superintendent, but it is difficult to discover why a portion should be included and others excluded. The bill should be consistent in its discriminations.

Having already during the past winter disapproved several bills upon the express ground that their provisions discriminated *against* the cities of New York and Brooklyn, I cannot now consistently approve one which discriminates in *favor* of those cities. Let all the cities of the State be included or let them all be exempted, would seem to be the proper course.

In justice to the Department which recommended the bill it should be stated that as originally proposed the bill made no exemptions, but the objectionable changes were made during its progress in the Legislature.

It becomes unnecessary to consider any of the other questions involved.''

June 25.

Veto of Assembly bill entitled "An act to provide for suitable buildings and accommodation for the zoological collection in the Central Park in the city of New York."

'' By this bill it is proposed to change the site of the Central Park zoological collection now in the custody of the park department. If this bill were approved the collections would still remain in the park, and I believe that in a very short time still another removal would have to be made at large expense to the city.

After most careful consideration of the questions involved, I have concluded to withhold my approval of this measure. In doing so I fully realize the annoyance which the present situation of the collection causes those who reside in that vicinity of the park, and I am aware that much ampler accommodations should be given to the animals that compose the collection. This should be done not only for the comfort of the animals themselves but also in order that the thousands of children and citizens who yearly visit the collection may be enabled to enjoy its educational benefits to a much greater degree than is possible in its present contracted condition. But I also realize that a decided public sentiment exists that Central Park is not properly the place for a zoological garden of such a size as befits the dignity and wealth of New York city. This present adverse action is, therefore, taken largely in the hope that the disapproval of this bill will materially aid in securing in the near future some suitable location where ample room will encourage the organization and allow the exhibition of a zoological collection and garden which will rival, as they should, those famous and interesting ones of London, Paris, Antwerp and Philadelphia."

June 25.

Memorandum filed with Assembly bill, Chap. 716, electrical subways in New York City. Approved.

"It is of the utmost importance that the electric wires in the city of New York should be placed under ground as soon as possible. Every good citizen having the best interests of the city at heart is desirous of seeing this done. But if this bill is not approved, the methods and machinery partially provided by existing statutes for the accomplishment of the work will prove of no avail and the removal of such wires is indefinitely postponed.

There is only one objection to the bill of any consequence, and that relates to the failure to add two additional city officials as commissioners. The mayor is added, and it would have been preferable if the commissioner of public works and the comptroller had also been included. Upon the bill coming into my hands I respectfully requested that it be recalled for the purpose of making such amendments, but the Legislature, by a decisive vote, refused so to do. This was a mistake which I very greatly regret.

The question is presented, however, should this objection be permitted to destroy the rest of the bill? Public sentiment seems to favor the measure, notwithstanding this objection. All the leading newspapers of the city are urging that it should become a law.

The people want the wires placed under ground, and care but little who does it, provided it is well, promptly and satisfactorily done. They have no interest in the squabbles or complaints of disappointed contractors or patentees who want to do the work or to have their own particular patents used by whoever does it. The interests of private individuals should not stand in the way of a great public improvement desired by every one.

It is true that the local authorities have expressed their disapproval of the measure, but solely on account of the single objection aforesaid. Two political organizations have announced their opposition to it for diverse reasons. The measure, however, is in no sense a political one.

While I have much respect for the local authorities and for these political organizations and greatly regret to differ with their judgment upon this or any other matter, I cannot resist the conclusion that the best interests of New York will be subserved by the approval of this bill. Being so convinced, I believe that it is my duty to approve the measure.''

See United States Illuminating Co. v. Grant (1889), 55 Hun, 222.

June 30.

The omnibus veto included the following:

Assembly bill No. 755, to appropriate $15,000 for the continuance of the surveys of the public lands.

A similar appropriation in the supply bill of 1885 was disapproved by me for reasons then stated, which still hold good. (See page 129 of Public Papers of 1885, *ante*, p. 74.)

Assembly bill No. 1031, to appropriate $4,000 for the improvement, enlargement and the removal of obstructions from the channel of Dead creek, in the town of Van Buren, Onondaga county, and providing for proper care of the overflow or leakage from the Erie canal.

The State officials specially charged with the cognizance of such matters deny the recitals in this bill of overflow or leakage from the canal, and of improper drainage on the part of the State. Such admissions in a statute, if untrue, are very dangerous, and might conclude the State when claims for damages therefor, thus openly invited, should be presented. The State officials report that the locality referred to in this bill is a natural swamp not caused or contributed to by the canal.

This bill is also mandatory, giving no opportunity for the State officials to exercise their judgment as to whether or not the work should be undertaken, whereas they are the very persons best qualified to judge of the expediency of expending such local appropriations. Local appropriation bills should ordinarily be permissive, merely authorizing the proper officials to expend the money appropriated if, in their judgment, such expenditure is proper and necessary.

Assembly bill (not printed), to appropriate $12,000 for the enlargement of the State dam at Port Byron.

This sum would be insufficient to complete the work proposed. The work could not be begun and left incomplete without rendering the whole system useless. It would, therefore, be exceedingly unwise to commence the work until a sufficient sum is appropriated to complete it.

Assembly bill No. 565, to appropriate $6,000 to repair the damage caused by the State to public highways between Fort Miller bridge and village, in Washington county, and in the town of Northumberland, in Saratoga county.

The recital in this bill of damages caused by the State is claimed by the State officials to be discordant with the facts. If this bill should become a law, such recital would constitute an admission, probably conclusive upon the State, of having caused such damage, and might bind the State to the payment of numerous unfounded claims.

Senate bill No. 273, to appropriate $5,000 for the construction of iron bridges, in the place of present wooden bridges, over the feeders to the Chenango canal in the towns of Hamilton and Madison, in Madison county.

The State officials report that these wooden bridges are mostly in good condition, and that iron bridges are not necessary or appropriate substitutes therefor.

Senate bill No. 275, to appropriate $2,000 to enlarge a stone culvert under the approach to a bridge over the Erie canal to the town of Whitestown.

The State officials report that the enlargement of this culvert is not necessary for State purposes, or by reason of any acts of the State, but would only promote drainage for private interests, rendered necessary in part by obstructions caused by one or more individuals requesting the State to perform the work.

Assembly bill No. 970, to appropriate $2,000 for the construction of an iron draw-bridge on the towing path of the Erie canal in the village of Fultonville.

If I am correctly informed this bridge is not needed for public travel, but would only serve limited private interests.

Assembly bill No. 935, to appropriate $3,000 for the construction of a sewer under the Erie canal, at its intersection with Andes avenue in the city of Utica.

The State officials report that this sewer is not needed for State purposes, and is not rendered necessary by reason of any acts of the State, but is merely an ordinary city sewer for city purposes. The State is under no obligation or liability to construct or contribute to the construction of such sewers. The usual and proper practice is for the State officials to give permission to the city authorities, under proper conditions, to construct sewers under the State canals. Such permission can be given by the proper State officials without any further legislation.

Assembly bill No. 485, to declare Deer river, in the county of Lewis, to be a public highway, and to appropriate $3,000 for removing obstructions and otherwise improving said river for the passage of logs, lumber and other timber from New Boston, in the town of Pinckney, to Lorraine road, in the town of Montague, county of Lewis.[34]

The erroneous impression seems to be widely prevelant that the declaration of a stream to be a public highway places the State under an obligation to improve and maintain the same, and to pay riparian owners all damages caused by the use thereof as a public highway. No such obligation or liability exists. (See veto of Assembly bill No. 1033 of this year, *ante,* p. 407.)

Usually at least one year is interposed between the act declaring a stream to be a public highway, and the act to appropriate moneys for its improvement. The State is under no obligation or liability, and it has not been the policy of the State, to undertake river and harbor improvements, except where the waters are really public thoroughfares. Moreover, if this work were to be undertaken by the State at all, it should be under the supervision of the Superintendent of Public Works, whereas this bill provides that the work be done under the superintendence of a special commissioner to be appointed by the Governor.

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[34] In 1891, chapter 384, Deer River was declared to be a public highway, for the passage of merchantable forest products.

Assembly bill No. 1026, to appropriate $5,000 for the expenses of a commission to be appointed for the purpose of making examinations and trials of recent inventions of military small arms suitable for the use of the National Guard.

The principal argument urged in support of this bill is the necessity of correspondence in calibre between the arms used by the State and by the United States. It is considered probable that the United States will soon make examinations and trials with reference to a change of the calibre of the arms carried by United States troops. Considering the superior facilities which the general government has for making examinations, trials and tests of military inventions, there seems to be no good reason why the State should, at the present time, undertake to make experiments which are apparently unnecessary, nor does there appear to be any such pressing necessity for immediate action that we cannot afford to wait for the decision of the general government.

Assembly bill No. 1024, to appropriate $25,000 for the erection of an armory in the village of Olean, Cattaraugus county, for the use of the National Guard in said county.

Senate bill (not printed), to appropriate $20,000 for the erection of an armory in the village of Middletown, Orange county, for the use of the National Guard in said county.[35]

In neither of these localities has there been a company of the National Guard organized for a full year. It does not seem wise for the State to expend such large sums for the erection of armories until the companies for whose use armories are to be constructed have been organized long enough to insure reasonable permanence. An existence of one full year should be the minimum condition of such an appropriation. On this basis I have this year approved of similar appropriations for armories at Saratoga Springs, Hoosick Falls and Mt. Vernon, in each of which localities companies have been organized for more than a year.

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[35] In 1888, an armory was provided for in Olean by chapter 120, passed April 10, and at Middletown by chapter 531, approved June 9.

Senate bill No. 457, to define the duties of dock masters in the city of New York.

Defectively drafted. This bill proposes to define the duties of dock masters by reference to a previous act, which is referred to only by a misquoted title, without mention of chapter, year or date of passage. The courts would not undertake to identify the act referred to. As the substance of the bill depends entirely upon the reference to the previous statute, the bill would have no effect if it became a law. I regret exceedingly that my approval of this bill would be useless, as the objects sought to be gained are thoroughly approved by the local authorities of New York city, and are, as I believe, highly meritorious. But this error cannot now be corrected so as to give the bill any vitality, without calling an extra session of the Legislature. The Legislature ought to employ competent counsel, to be charged with the responsibility of seeing that all such errors in bills are called to the attention of the Legislature before final action is then had thereon.

Assembly bill No. 1101, to authorize the village of Mt. Vernon to raise additional tax on annexed territory.

Defectively drafted. Section 5 of the bill, by clerical error, continues in force all the provisions of a previous act not consistent with this act. The word "consistent" was manifestly intended to be "inconsistent."

Assembly bill No. 1085, to amend the charter of the village of Fredonia.

Defectively drafted. By clerical error this bill proposes to amend section 41 instead of section 43 of the charter, as intended, thus accidentally destroying existing provisions of more importance than the amendments proposed.

Assembly bill No. 802, to amend the general law providing for liens of livery-stable keepers. (Chapter 498 of 1872.)

Defectively drafted. The bill amends section one of the amended act " to read as follows," etc., and then proceeds with an independent section two, covering the subject-matter of section two of the amended act, but leaving section two of the amended act standing. Section two of this bill should have amended section two of the amended act " to read as follows," etc. While the courts would undoubtedly construe this bill in accordance with the intention of its framers, yet such slovenly legislation, unless containing provisions of vital importance, ought not to be allowed to deface the statute books.

Assembly bill (not printed), for the preservation of fish in Lake Erie.

Defectively drafted. The use of the word " whereon " for " wherever," destroys the sense of an important provision.

Senate bill (not printed), to authorize business corporations organized under chapter 611 of the act of 1875, to mortgage their real estate.

Defectively drafted. This bill should have been drafted to amend section 13 of the act of 1875, which provides that the corporations formed thereunder may issue bonds, but by manifest oversight omitted to authorize the execution of mortgages to secure such bonds. This bill, however, is drafted as independent of and merely supplemental to the act of 1875, and provides that "every corporation formed under this act" may mortgage, etc. But no corporations can be formed under "this act." Corporations formed under the act of 1875 were evidently intended. If this bill should become a law, the authority of the corporations formed under the act of 1875 to mortgage their real estate would still remain substantially as doubtful as at present. No practical benefit would, therefore, result from Executive approval of this bill. I regret this very much, as it is desirable that these corporations should have unquestionable authority to mortgage their real property, and as the absence of such authority is clearly a *casus omissus* in the original act.

Assembly bill No. 556, to amend sections 887 and 892 of the Code of Criminal Procedure as to disorderly persons.

Defectively drafted. The bill proposes to amend section 892 "to read as follows," and by manifest oversight omits an important provision added at the end thereof by an amendment made in 1886.

Assembly bill No. 1035, to amend the charter of the "State Woman's Hospital."

Defectively drafted in several minor respects, no one of which is perhaps fatal, but in combination give an appearance of slovenly legislation. While the subject of the bill as expressed in the title is to amend the charter, the bill itself is partly amendatory and partly independent of the existing charter. As this is a private or local bill, the failure to correctly express the subject in the title would at least raise a question as to its constitutionality.[*] The object of the bill appears to be meritorious, but the delay of another year to perfect its form can cause no serious damage.

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[*] Const. 1846, art. 3, § 16.

Assembly bill No. 849, to amend the general law for laying out highways, by compensating commissioners to assess damages at the rate of five dollars per day.

Defectively drafted. The bill is so worded that it is apparently the commissioners of highways who are to receive the compensation, instead of the commissioners to assess damages, and it is difficult to say which way the courts would construe the bill.

Assembly bill No. 439, to amend the general act for the incorporation of credit, guaranty and indemnity companies. (Chapter 611 of 1886.)

Defectively drafted. The bill sets out to amend certain sections of the amended act " so as to read as follows," etc., including section 8 thereof. While making a comparatively trifling amendment to subdivision 3 of section 8, the bill accidentally drops out subdivision 4 thereof entirely. These companies can much better afford to lose all the amendments proposed by this bill than to lose the omitted subdivision 4.

Assembly bill No. 560, to amend section 2 of chapter 597 of the Laws of 1870, relating to the assessment of real estate on account of bonded debt incurred in the construction of railroads.

Defectively drafted. The chapter proposed to be amended by this bill, having been entirely repealed by section 6 of chapter 336 of the Laws of 1880, is beyond the possibility of amendment.

This bill is another of the frequently recurring illustrations of the propriety of my repeated recommendation to the Legislature that competent counsel should be employed by them to see that all bills should be in proper legal form before they reach the Executive Chamber.

Assembly bill No. 638, to amend the New York City Consolidation Act so as to exempt property owned or leased by the German-American School Society from taxation.

Defectively drafted. The bill proposes to amend section 824 of the Consolidation Act by adding a new subdivision thereto, to be known as subdivision 16. Subdivisions 16 and 17 have already been added to said section by acts passed in 1885 and 1886, which were evidently overlooked by the author of this bill.

Senate bill (not printed) to incorporate the Binghamton Masonic Board of Trustees.

Defectively drafted and unnecessary. While the object of the bill as expressed in the title is to incorporate, the body of the bill does not purport to incorporate, but merely establishes a joint board with certain limited powers which these trustees already have under existing laws. As this is a private or local bill, its object should, in accordance with the Constitution, be correctly expressed in its title.[p] Upon conference with the representatives of the parties interested, it is understood that they are satisfied that they can fully carry out the plans which this bill was intended to promote without the necessity of further legislation.

Senate bill No. 552, to amend the general law relating to the powers of board of supervisors. (Chapter 482 of 1875.)

Defectively drafted. This bill proposes to add a new subdivision to section 1 of the amended act, to be known as subdivision 35. But subdivisions 35 and 36 have already been added to said section by the Laws of 1880 and 1881. This bill was not intended to amend the present subdivision 35, which provides for a wholly different subject.

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[p] Const. 1846, art. 3, § 16.

Assembly bill (not printed) to amend section 1 of chapter 180 of the Laws of 1845, authorizing towns to have one commissioner of highways instead of three.

Defectively drafted. This bill provides that immediately upon the adoption of a resolution therefor at a town meeting, the terms of all commissioners of highways for such town shall immediately expire, and thereafter one commissioner shall be elected annually. The wording of this bill fairly raises the question whether such election could take place before the next annual town meeting after the resolution should be passed, thus leaving the town without any commissioner at all for the intervening year. But, in any event, the present law allows the change to be made from three commissioners to one with sufficient rapidity.

Assembly bill No. 848, to authorize the town of East Chester, in Westchester county, to have three commissioners of highways.

Unnecessary special legislation. All that is sought by this bill is already provided for by a general statute. (See Laws of 1845, chapter 180, section 2, as amended by chapter 455 of the Laws of 1847.)

Senate bill No. 474, to authorize the county of Lewis to have but one superintendent of the poor.

Unnecessary special legislation. The object sought can be gained by existing general law in substantially the same manner as proposed by this bill. (See chapter 498 of the Laws of 1847 as amended by chapter 298 of the Laws of 1862.) If there is any special statute preventing the application of this general law to Lewis county, then the proper method of accomplishing the object of this bill would be by repealing such special statute.

Assembly bill No. 530, making it a misdemeanor for parties cutting ice in Cazenovia lake to omit the maintenance of proper guards around the openings caused by such cuttings.

Wholly unnecessary special legislation. Section 429 of the Penal Code contains substantially the same provisions applicable to all waters within the boundaries of the State. Competent advisory counsel would have saved the Legislature from the manifest absurdity of presenting such a bill for Executive consideration.

Assembly bill (not printed), to enable the villages of Tarrytown and North Tarrytown to construct sewers.

Unnecessary special legislation. These villages already have, by general laws, all the powers sought to be conferred upon them by this special bill.

Assembly bill No. 710, to incorporate the Highland Fire Engine and Hose Company No. 3, of the village of Florida.

Assembly bill No. 1160, to incorporate Seth N. Hedges Post, No. 216, of Dansville, Livingston county, Grand Army of the Republic.

These two bills are wholly unnecessary special legislation. Both of these organizations can become incorporated for all the purposes proposed in these bills, by filing certificates, etc., as provided by existing general statutes.

Assembly bill No. 1004, to amend the charter of the city of Brooklyn, with reference to buildings within the fire limits, and to granting licenses to sell liquors in places where concerts are given.

Unnecessary special legislation. This bill was evidently drafted and passed by the Legislature under the erroneous impression that chapter 281 of the Laws of 1862, prohibiting the sale of liquors in certain places of amusement in all cities and incorporated villages, was still in force. But that act has since been repealed. There is now no restraint upon the granting of licenses to sell liquors in places of amusement, except when prohibited by special acts. There being no such special act applicable to the city of Brooklyn, the excise authorities in that city already have all the powers proposed to be granted them by this act.

Senate bill No. 447, to incorporate the International Loan, Trust and Guarantee Company.

The special legislation proposed by this bill has become unnecessary by reason of a general act for the incorporation of companies of this nature passed by the present Legislature, and which is declared by the Superintendent of the Banking Department to be as liberal in its provisions as is consistent with due safety.

This bill also contains a serious clerical error, using the word "with" for "worth" in an important connection, and which cannot now be corrected.

Senate bill (not printed), to establish a ferry from Gunnison's ferry in the town of Crown Point, in Essex county, across Lake Champlain.

The provisions of this bill prohibiting any other ferry within a specified distance of the ferry proposed to be established, are clearly in violation of section 18 of article III of the Constitution, prohibiting the passage of a private or local bill granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever. Governor Tilden vetoed a similar bill on this ground in 1875 (see page 2 of veto messages of Governor Tilden for that year),* and the Court of Appeals has since confirmed Governor Tilden's opinion.[q] (98 N. Y. 150–152.) The Constitution applies to Essex county as well as to other parts of the State.

Assembly bill No. 747, to release a portion of the abandoned Genesee Valley canal to adjoining land-owners.

This bill is certified as having passed by a majority vote in the Assembly. The Constitution requires that it should have received a two-thirds vote.[r] An investigation of the records of the Assembly shows that it did not there receive the requisite vote, and my approval of the bill would be useless.

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[q] Re Union Ferry Co.

[r] Const. 1846, art. 1, § 9.

* *Ante*, vol. 6, p. 813.

Senate bill No. 477, to incorporate the Masonic Hall Association of the city of Buffalo.

The only objection to this bill is the clause exempting the property of the proposed corporation from all general taxes for State or municipal purposes. A general act exempting all similar corporations from taxation might be unobjectionable, but it is unfair and unjust to exempt certain select corporations of this nature by special laws, leaving other similar bodies, equally entitled to claim exemption, to bear their regular share of taxation, with such increase as results from the exemption of their more favored neighbors. Equality and uniformity, as between all parties similarly situated, are fundamental principles of just taxation, and can only be obtained by general laws. I regret that the objectionable clause was inserted in this bill, as otherwise it is highly meritorious, and I should gladly approve it.

Senate bill No. 241, to amend the charter of the Methodist Episcopal Hospital in city of Brooklyn.

This bill exempts all the property of this hospital from taxation, and is amenable to the same objection as the last above-mentioned bill, with one exception. The amended section already contains the exemption provisions. This bill merely continues the provision already in force and amends the section in other respects. Nevertheless, these sporadic exemptions of here and there a charitable institution by special legislation, instead of uniform exemptions by general laws, work such manifest injustice and inequality as between charitable institutions of the same general nature, exempting some and thereby increasing the burden on others equally deserving, that I am not now willing to approve any special bill which contains such exemption provisions.

Assembly bill (not printed), to continue the exemption from taxation of the property formerly owned and now occupied by the Bedford Reformed Dutch Church, so long as the same shall be used and occupied by said church and society for church purposes.

The reasons assigned for disapproving the two last-mentioned bills apply with full force to this bill also, and prevent my approval thereof.

Assembly bill No. 338, directing the commissioners of excise of the town of Corning, in Steuben county, to pay one-half of the moneys arising from licenses for the sale of liquor in the village of Corning to the St. Joseph's Orphan Asylum of said village.

The poor authorities throughout the State are now prohibited by law from allowing pauper children to remain in the poor-houses, and are required to place them instead in orphan asylums controlled by authorities of the same religious faith as the parents of such children, or in families. Under this law all the various orphan asylums are, or are entitled to be, paid by the proper authorities for the support of all the pauper children in their custody. Orphan asylums have the care of but very few children who are not entitled to entire or partial support from the regularly constituted poor funds. These asylums should be fully paid for the care of such children under existing laws. For the State to go further and authorize them to receive public moneys for the support of indigent children who are not legally entitled to receive help from the poor authorities would be a dangerous precedent.

Moreover, the application of excise moneys should, as far as possible, remain uniform throughout all the towns of the State. In accordance with this salutary doctrine, a statute contributing a portion of the excise moneys of the town of Corning to the Corning library was several years ago repealed, and all further special legislation in that direction ought, on general principles, to be discouraged. Moreover, this bill is mandatory in its provisions, leaving no discretion anywhere to proportion the amount of moneys to the needs or services of the asylum. If any legislation of this nature is desirable it should at least leave the amount to be given to the determination of the local authorities. The people of the town of Corning, under the authority of general laws, are the proper persons to say what disposition shall be made of their local revenues. The supervisor of the town, who is their official representative, protests against this bill and claims that the people of the town are opposed to it, and his opinion should be given such weight as his official position entitles it to.

Senate bill No. 557, to amend chapter 269 of the Laws of 1880, relating to the review of illegal, erroneous and unequal assessments, by allowing costs against the municipality in all cases where judgment shall be directed in favor of the petitioner.

As the law now stands the petitioner does not recover costs unless it shall appear to the court that the assessors or other officers acted with gross negligence, in bad faith, or with malice. This is as far as the law ought to go in awarding costs to the petitioner. It should be borne in mind that the act of 1880 is essentially a matter of favor to the party assessed. He has his "day in court," and it is his duty to appear before the assessors, when they sit, according to due notice to hear complaints and correct their rolls. If he fails so to appear, and afterward finds fault with his assessment, he should not be allowed costs for mere correction of inadvertent errors on the part of the assessors.

This bill is specially opposed by the local authorities of New York city, where its provisions would be unjustly burdensome.

Assembly bill No. 813, to amend the New York City Consolidation Act in relation to wooden buildings.

This bill has been rendered unnecessary by reason of a more elaborate act embodying substantially the same provisions, having become a law on the 15th of this month.

Senate bill No. 199, to authorize the alteration of a portion of Melrose avenue in New York city.

This bill is opposed by the local authorities. Owing to the limited time at my disposal I have concluded to defer to their judgment.

Senate bill No. 377, to authorize the alteration of certain streets in the 23d ward of New York city.

This bill is opposed by the local authorities. Owing to the limited time at my disposal I have concluded to defer to their judgment.

Assembly bill No. 96, to amend section 210 of the New York City Consolidation Act relative to the disposition of excise moneys.

This bill is also opposed by the local authorities, and owing to the limited time at my disposal I deem it the safest course to defer to their judgment.

Assembly bill No. 1142, amending the New York City Consolidation Act relating to notices to unknown owners of lands sold for taxes.

Assembly bill (not printed), amending the New York City Consolidation Act relating to permits for stands in streets.

Senate bill No. 451, to authorize the comptroller of the City of New York to audit the claim of James D. Hall.

Senate bill (not printed). Parade ground in Central Park.

Each of these four bills is opposed by the local authorities of New York city. Owing to the limited time at my disposal I have concluded to defer to their judgment."

June 30. The omnibus veto also contained a statement by the Governor that 338 bills were left in his hands at the adjournment of the Legislature, and that in the limited time allowed by the Constitution such consideration as he had been able to give the remaining bills did not convince him that he should approve them. These bills, 47 in number, were therefore permitted to expire without action. The titles of these bills are as follows:

Senate bill No. 517, to amend section 2667 of the Code of Civil Procedure, relative to administrators' bonds.

Senate bill No. 192, to amend the charter of Rochester.

Senate bill No. 193, relating to Manhattan avenue in the city of Brooklyn.

Assembly bill No. 491, to amend the Code of Criminal Procedure relating to witnesses in criminal cases.

Assembly bill No. 1006, relating to Franklin and Eighteenth avenues in New Utrecht.

Senate bill No. 130, to authorize the closing of Jewel street in Brooklyn.

Assembly bill No. 1231, relating to the department of parks in Brooklyn.

Senate bill No. 423, to amend section 1252 of the Code of Civil Procedure.

Senate bill No. 430, to authorize the repairing of Johnston avenue in Brooklyn.

Assembly bill No. 274, relating to the compensation of stenographers for grand juries.

Assembly bill No. 453, to enlarge the corporate limits of Binghamton.

Senate bill No. 355, to amend sections 3068 and 3070 of the Code of Civil procedure relative to appeals from justices' courts.

Assembly bill No. 1664, to amend the charter of Albany relative to taxes on manufactories.

Assembly bill No. 586, for the relief of religious societies in Kings county.

Assembly bill No. 850, for the improvement of road in Newtown.

Assembly bill No. 763, Westchester Trust Company, Incorporating.

Assembly bill No. 1204, to change the name of East Chester creek to East Chester river.

Assembly bill No. 1127, to compel the assignment of mortgages.

Assembly bill No. 650, to authorize stockholders in corporations to vote per capita.

Assembly bill No. 816, relating to Brooklyn Equity Gas Light Company.

Assembly bill No. 241, to amend section 872 of the Code of Civil Procedure.

Assembly bill No. 474, for inspection of steam vessels in Onondaga, Oswego and Tompkins counties.

Assembly bill No. 840, relating to Irving and Sedgwick streets in Brooklyn.

Assembly bill No. 902, relating to excise moneys in towns.

Senate bill No. 165, to amend Chatham village charter.

Assembly bill No. 1128, relating to the audit of the accounts of game and fish constables.

Assembly bill No. 657, regulating demand prior to actions for conversion.

Assembly bill No. 1136, authorizing purchase of Syracuse Waterworks company property.

Assembly bill No. 661, amending sections 2263 and 3215 of Code of Civil Procedure.

Assembly bill (Int. No. 1445), amending charter of New York and Canada Bridge Company.

Assembly bill No. 1189, amending Jamestown charter.

Assembly bill No. 846, amending Revised Statutes relative to sheep killed by dogs.

Assembly bill No. 667, for dissolving Hope Savings Bank of Albany.

Senate bill (Int. No. 729), amending act relating to Oswego police department.

Senate bill No. 547, relating to applications for legislation authorizing Board of Claims to audit.

Senate bill (Int. No. 736), amending act for division of school commissioner districts.

Assembly bill No. 941, amending Judiciary act (1847, chapter 280.)

Senate bill No. 77, relating to Brooklyn board of aldermen.

Senate bill No. 124, amending sections 1242 and 3160 of Code of Civil Procedure.

Assembly bill No. 1250, to incorporate the city of Middletown.

Assembly bill No. 384, amending act for relief of corporations, (McIntyre bill.)

Assembly bill No. 1264, amending act relative to election of school officers.

Assembly bill No. 577, relative to voting by ballot on tax propositions at town meeting.

Senate bill No. 407, to provide for issuing licenses for persons to marry.

Assembly bill No. 1066, amending act for construction of railroads in counties. (Burns bill.)

Assembly bill No. 544, amending chapter 455 of the Laws of 1847, relative to fees of referees in highway proceedings.

Assembly bill No. 1.134, Brooklyn East River Bulk Head and Pier Line, relating to.

REPORT ON VETO OF CONSTITUTIONAL CONVENTION BILL.

The subject of a constitutional convention, *ante,* p. 308, was considered by the Legislature at some length. Several bills were introduced and one was passed, which was vetoed on the 10th of May, *ante,* p. 393. In the Assembly, the veto message was referred to a select committee, which on the 26th of May, presented the following report:

"The special committee on constitutional convention to which was referred the message of the Governor dated May 10, 1887, returning, without approval, Assembly bill

No. 1014, entitled 'An act to provide for a convention to revise and amend the Constitution,' respectfully report that they have examined the said message which was evidently prepared with more haste and less care and research than usually attends the preparation of documents of this importance in the Executive chamber, and they find, with all due respect to the Executive, that the objections to said bill are unreasonable, fanciful and misleading, and so far as said message assumes to state facts, it is, in many respects, erroneous.

In obedience to the mandate of the Constitution[a] and the will of the people as registered at the general election in the fall of 1886, the Legislature, quick to respond to the popular voice passed this bill, whose provisions are in complete accord with the spirit of the laws governing this State, and whose most important provision follows the rule of representation approved by the people in an almost unbroken line of precedents from the foundation of the State government to the present day.

We need only call the attention of the Executive, the Assembly and the people to the fact that the first Constitution of this State was adopted by a convention elected in the same manner as the people of the colony of New York had been accustomed to elect delegates to their colonial legislature. The next convention to amend the Constitution was held in 1801, and the delegates were elected in the same manner as members of Assembly. The same rule was followed in 1821 and again in 1846, when most general and valued changes were made in the fundamental law. In 1867 the people, for the first time, departed from the rule of Assembly district representation and provided for an election of delegates by Senatorial districts and from the State at large. But that convention and its work were unsatisfactory to the people; every article submitted by it at the election in 1869 having been rejected except that relating to the judiciary.

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[a] Const. 1846, art. 13, § 2.

Your committee submit that to have departed from the rule of Assembly district representation and to have provided for representation in the convention by congressional districts as suggested by the Executive in this message would have been to adopt a unit of representation hitherto unknown in this State for any State purpose, and it would have enabled the Democratic party to have made additional and unforeseen thrift out of the unjust and revolting congressional apportionment of the year 1883, under which the Republican party of this State was wronged out of its fair share of representation in the national congress.

The Governor's care for the interests of the Prohibition and Labor parties, ' is touching in the extreme.' The Democratic party while opposing every proposition to limit, repress or confine the sale of intoxicating liquors and opposing with startling unanimity every measure which seeks to draw additional revenues for State purposes from such sale and so relieve the real property of the State from a part of the burdens of taxation which it now bears, is anxious to encourage the continuance of that organization in the hope that it may draw votes from and thus weaken its adversary. On the other hand the labor organization receives good words from the Governor, but we submit to the members of the Labor party in this State, that the Democratic party while making pretense of being in accord (and in some respects it may be) with the aims of that organization, is secretly its bitter and unrelenting adversary, and a recommendation of favor toward the labor interest in this State comes with an ill grace from an executive whose party in the Assembly a few days ago voted, almost unanimously, against allowing the Labor party in the city of New York, which at the last election polled over 60,000 votes, an inspector of election in the election districts of that city whose duty it should be to see that that vote when honestly and fairly cast should be honestly counted and credited.

The Governor's suggestions could not have been complied with without creating such complexity in the system of representation as had never been adopted before in this State for any State purpose. Your committee are of the opinion that under the system of representation provided by this bill, the Labor and Prohibition parties would have had representation in the convention commensurate with their numbers in the State as the Republican and Democratic parties would have found it for their interest to have given the principles upon which these organizations are founded fair representation in their State and district nominations.

As to the time at which the election should be held, every consideration of economy, prudence and deliberative action demanded that the delegates should be chosen at the next general election as provided by this bill, and that the people should not be subjected to the expense and trouble, the amount of which is almost incalculable, of holding a special election when within five months they could elect such delegates without any additional expense. The same rule applies to the time for holding such convention. It is submitted that there are now no such reasons for urgency as existed in 1801, 1821, 1846 or even in 1867, when the people demanded immediate relief from oversight or error in the fundamental law. Such amendments to the Constitution as may now be necessary require the most careful study and deliberation that principles now in process of development and every day undergoing change in the public mind should not be adopted with haste nor rejected without fair consideration.

The Executive makes the charge of extravagance against the Legislature based upon the amount appropriated by this bill as compared with that of 1867. If he had carried his inquiries on this subject a little farther, he would have learned that the convention of 1867 cost the State $385,551.19, and the amount appropriated by this bill for such purposes being $320,000, there is a saving to the taxpayers of the State of $65,551.19 over the amount paid for the expenses of the convention of 1867.

From these and other considerations your committee are of the opinion that it was the intention of the Executive and of the Democratic party, of which he is the representative always, to prevent, if possible, the holding of a constitutional convention as directed by the people, and to defeat any bill which this Legislature could pass which would not be likely to insure a partisan and Democratic majority in the convention. Your committee are of the opinion that the Executive and other leaders of the Democratic party have determined to set at naught the words of the Constitution and to defy the express command of the people rather than give opportunity for discussing in a constitutional convention the great questions involving the limitations of corporate power, the relations of capital to labor which would be likely to make more definite and certain the lines which now divide the Labor party from the Democratic organization.

This is the second notable instance within two years in which the present Executive has, for a purely partisan purpose, disregarded the words of the Constitution, and by his unjustifiable use of the veto power obstructed the legislative branch of the government in carrying out the people's will.

No special pleading will cloud the popular judgment or conceal the partisan motives which inspired this message. As the representatives of the people whose strict command the Executive has thus thwarted and disobeyed, it remains for the Legislature to appeal for its justification to that power which is above governors and legislatures — the people themselves.

Your committee are of opinion that this bill should become a law, notwithstanding the objections of the Governor."

The bill was not passed over the veto. For provisions regulating constitutional conventions, see Constitution of 1894, article 14, section 2.

1888. JANUARY 3. LEGISLATURE, ONE HUNDRED AND ELEVENTH SESSION.

DAVID B. HILL, Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 3, 1888.

TO THE LEGISLATURE.— The opening of the one hundred and eleventh session of the Legislature of New York since the establishment of our Constitution, finds our Commonwealth in the enjoyment of a large share of public prosperity, suggestive of the benefits of continued good government, and affording renewed evidence of the permanence and inestimable value of our free institutions.

I have determined to make this annual message the briefest on record. This conclusion is reached, not because there is not an abundance to present, but because I fully realize that he who gives his suggestions with conciseness and brevity confers no small gift upon active men in this busy age. He secures, in addition, an attention which is ordinarily refused prolix State papers. Having spoken in other years at considerable length, in like messages, upon many of the questions with which I shall deal in this, I shall content myself in the main with a condensed recital of some of the reforms and changes already accomplished, and reiterate many of the suggestions previously advocated.

I may be permitted to observe that many important recommendations heretofore made by me, having already received the favorable action of the Legislature, my task at this time is materially lightened.

General laws have been passed by which much special legislation can be avoided. A general act for the incorporation of trust companies has been enacted, thereby dispensing with the necessity of special acts.

The powers of the local authorities of villages and towns in the matter of local improvements and expenditures have been enlarged and increased, thus relieving the Legislature from numerous applications to confer such powers in special cases.

Appeals in capital cases have been authorized to be taken from the Court of Oyer and Terminer directly to the Court of Appeals, by which the administration of the criminal law in this class of cases will be greatly facilitated.

Preferences in assignments of insolvent debtors have been regulated and restricted, insuring hereafter a more equitable distribution of the debtor's estate among creditors, being a measure of considerable importance to the mercantile community.

A State Board of Mediation and Arbitration has been created for the amicable adjustment of labor disputes arising between employers and employes, which board is now in fairly successful operation, and reasonably meeting the expectations of the people.

Additional holidays, including the Saturday half-holiday, have been established by law, affording opportunity for much-needed recreation and enjoyment to large classes of people, especially during the summer months.

Private bankers, not already engaged in banking business, have been prohibited from making use of any artificial or corporate name, or other words indicating that their business is that of a bank, by which legislation innocent people will hereafter be protected from imposition, and much fraud prevented.

An act has been adopted providing for the preservation of the forests belonging to the State, regulating the control and management thereof and creating a Forest Commission for such purposes.

Substantial progress has been made in establishing a complete system for the prevention of adulteration of articles of food and drink. The sale of canned goods has been regulated to a limited extent; the use of certain improper substances in the manufacture of confectionery has been prohibited, as well as the use of any substitute for hops or pure extract of hops in the manufacture of ale or beer; and acts have been passed to prevent the adulteration of vinegar and wines.

The employment of children in various laborious industries has been regulated and beneficially restricted.

The Mechanics' Lien Law has been revised and improved.

RENEWAL OF PREVIOUS RECOMMENDATIONS.

In the discharge of my obligation to communicate to the Legislature information respecting the condition of the State, and to recomend such matters as I may judge expedient, I respectfully commend to your consideration the following:

1st. An act regulating the employment of prison labor.[1]

After the abolition of the contract system, it was held that under existing laws, the only system of prison labor that was legally available for operation was the public account system. The Superintendent of State Prisons has, therefore, no discretion in the matter, in the absence of affirmative legislation. That system, as has been repeatedly urged, should be regulated, modified and restricted, so as to prevent, as far as possible, unjust competition and interference with outside labor. The Legislature has heretofore neglected to determine this question by necessary and appropriate legislation. My views upon this subject have been so frequently expressed that it seems unnecessary to reiterate them. The report of the Prison Labor Commission, authorized in 1886, and presented to the last Legislature and unacted upon by that body, elaborately discusses the whole problem of prison labor, and its conclusions and recommendations should be carefully considered.

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[1] This subject was considered at an extraordinary session of the Legislature, which opened on the 17th of July, 1888, at which session an act was passed, chapter 586, "providing for the proper employment of convicts in the penal institutions of the State, and making an appropriation necessary to prevent the prisoners from remaining in idleness." Governor Hill signed the bill, though it did not in all respects receive his approval. See memorandum of August 1.

2d. A measure providing for spring municipal elections in the city of New York.

The details which, in my judgment, such a measure should contain, have been outlined in previous messages, and need not be repeated at this time.

3d. An act providing for a special counsel to the Legislature.[2]

My views in relation to this matter are so well understood that further explanation of them may well be omitted.

4th. A revision of the tax laws of the State, whereby real and personal property shall be placed upon an equal footing for all purposes of taxation, and personal property be compelled to bear its just proportion of the public burdens.

This recommendation is now made for the third time, but it has not thus far resulted in securing any legislation whatever. Public sentiment has, however, been awakened upon the subject, and the party in control of the Legislature, at its State Convention in September last, declared itself as follows: "We are in favor of such further changes in the tax laws as shall equalize the burden, and compel personal property to bear its proper share." It is to be hoped that this solemn pledge to the people may in good faith be fulfilled.

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[2] See L. 1893, chapter 24, amending the legislative law, by adding a provision requiring the Statutory Revision Commission to draft bills for members of the Legislature, and advise concerning the form and validity of bills.

5th. The creation of a commission to revise the charter of the city of New York.[3]

The arguments in favor of this step were presented at length last year, and they are believed to be as pertinent now as then. A work of this important character cannot well be perfected in the Legislature without outside aid. The necessity of revision is conceded, and the authorization of a commission to prepare and submit a proposed charter to the Legislature for its action would be a practical effort toward reform in the right direction.

6th. The abolition of the Board of Regents of the University, and the transfer of most of its powers to the Department of Public Instruction.

The object sought to be accomplished is the unification of the supervision of the educational interests of the State, and the abolition of unnecessary and ornamental offices.

7th. The abolition of the State Board of Charities, and the concentration of its powers in a single officer.

8th. The abolition of the State Board of Health, and the vesting of its powers in one official.

The primary object involved in the last two measures is the concentration of official power and responsibility in some one responsible head, by which the efficiency, usefulness and economy of the public service will be increased.

9th. A measure specifically providing for the enforcement of the " free exercise and enjoyment of religious profession and worship without discrimination or preference,' guaranteed in this State under the provisions of the Constitution " to all mankind."[a][4]

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[3] As to the Greater New York commission, see 1887, note 5, *ante*, p. 299.

[a] Const. 1846, art. 1, § 3.

[4] As to the free exercise of religious profession and worship in penal institutions, see 1885, note 7, *ante*, p. 25.

It is claimed that such right is denied in some of our penal institutions. In this connection it is suggested that all penal institutions of a public or semi-public character, receiving aid and support from the State on account of inmates committed to them by the courts, should be under the control of managers, a part of whom, at least, should be selected by the State, in order that the State may have some voice and influence in the administration of the affairs of such institutions.

10th. An act further limiting, regulating and restricting the powers of corporations in the issue of stock and bonds.

That some check should be placed upon corporations in this respect seems to be urgently required. The existing laws are defective and inadequate to properly protect the public, and to guard against the issue of stock and bonds representing little or no valuable consideration, and which are essentially, though perhaps not technically, fraudulent or fictitious in their character. Nearly all the monstrous fraudulent transactions of corporations in recent years are traceable to this source, and the time is opportune to render their repetition impossible.

11th. A financial measure affording a new source of revenue to the State, specifically providing for the taxation of that species of property which now almost entirely escapes assessment, to-wit: The indebtedness of corporations, joint-stock companies and associations, represented in the scrip, bonds or certificates of indebtedness issued by such bodies, and the imposition of a special tax thereon, to be fixed by law, and to be collected from such organizations by the Comptroller of the State.

This plan, explained in all its details, has been recommended in previous messages, and in various reports of the Comptroller, and merits most serious consideration. A bill embodying its principal features passed one House last year, but failed in the other. An earnest effort to secure its adoption should be made this year, and, if successful, a means will be afforded of lessening in a large degree the present burden of taxation upon real estate.

12th. The creation of a State Gas Commission, which shall possess over gas companies powers somewhat similar to those which the Railroad Commission has over railroads, to be maintained without cost to the State, but at the expense of the companies affected.[5]

It is submitted that such a measure, providing a proper tribunal for the hearing of complaints and the correction of unjust exactions, would be beneficial, and relieve the Legislature from much special legislation upon this subject. It is suggested that all electric and other lighting companies might with propriety be included within the provisions of the proposed measure.

13th. An amendment to the statute which limits the amount of recovery to $5,000 in the case of the death of a person caused by the negligence of another person or of a corporation, and increasing the amount of damages that may be recovered in such actions to $10,000.[6]

The present restriction is unreasonable, and works great hardship in many cases. Such an amendment passed the Assembly last year, but failed in the Senate.

14th. A statute making railroad companies absolutely liable for all damages by fire set by their locomotives, irrespective of the question of proof of express negligence on their part.

Some provision of this character seems necessary for the better security of our citizens owning property on the route of railroads.

15th. The abolition of the office of State Agent for Discharged Convicts.[7]

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[5] As to the state gas commission, see 1887, note 13, *ante*, p. 312.

[6] As to the amount recoverable in the case of the death of a person caused by negligence, see 1887, note 16, *ante*, p. 318.

[7] As to the abolition of the office of State Agent for Discharged Convicts, see 1887, note 20, *ante*, p. 325.

The reasons for this recommendation were fully set forth in last year's message, and nothing has since occurred to change my views of its propriety.

16th. A measure providing for a special labor commission.

The experience of this State in past years has demonstrated that whatever objections may justly be made to the creation of commissions consisting of numerous members, to administer particular branches of the statute law, no reasonable objection can be made to the appointment of such a commission to frame laws upon subjects of great public interest, especially upon such as have not had careful special investigation by the State. Such a subject is presented to us now in the relations of capital to labor, and I believe that much good might be accomplished by the creation of a commission which should consider this general subject and report to the next Legislature what, if any, amendments tending to the welfare of the industrial classes can be made to our laws. A commission of this kind, having ample time at its disposal and no legislative duties to perform, could deliberately and profitably consider the many suggestions that would be made to it by employers and employed. Those who are especially interested in these problems of government, not infrequently advance ideas of much value, but the generality of legislative committees have apparently no time or inclination to devote themselves to a wise solution of the questions presented. The result of such consideration as is usually given by ordinary committees is the passage, in many instances, of crude and imperfect bills, which are unsatisfactory or oppressive to every interest affected. The tendency of the time is toward remedial legislation in these matters, and if that tendency can be properly informed and directed, the result ought to be of benefit to all. I accordingly again recommend the creation of a special labor commission.

17th. The inauguration of a system of manual training in schools.[8]

Those who have given careful attention to the methods of education prevailing in our public schools believe that some amendment of our system, tending toward manual training, is expedient. I, therefore, respectfully, again recommend that the advisability of the inauguration of such a system be given consideration by the Legislature, and refer to that portion of the annual message of 1887 which presented my views upon this subject.

VETERANS' RIGHTS.

The right of inmates of the State Soldiers and Sailors' Home, at Bath, to exercise the elective franchise, has recently been questioned, and it is understood that a large number of the veterans have even been indicted in the local courts for alleged violation of the election law. Some legislative action in the present situation of affairs is desirable, and I shall take early opportunity to communicate with you upon the subject, and to make recommendations as to the way in which the rights of these veterans can and should be more clearly established.[9]

CAPITAL PUNISHMENT.

In my first annual message in 1885, it was stated as follows:*

"The present mode of executing criminals by hanging has come down to us from the dark ages, and it may well be questioned whether the science of the present day cannot provide a means for taking the life of such as are condemned to die, in a less barbarous manner. I commend this suggestion to the consideration of the Legislature."

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[8] Chapter 334, approved May 19, 1888, authorized public schools and normal schools to provide for industrial training, and for teaching and illustrating the manual or industrial arts and the principles underlying the same.

[9] See special message of January 12, *post*, p. 497 and note.

* *Ante*, p. 37.

Nothing was accomplished, however, that year, but, public attention having been drawn to the subject, the Legislature, in 1886, appointed a commission, consisting of Elbridge T. Gerry, of New York; Dr. A. P. Southwick, of Buffalo, and Matthew Hale, of Albany, to investigate and report to the Legislature the most humane and practical method known to modern science, of carrying into effect the sentence of death in capital cases. It is expected that this commission will soon present its report, which will undoubtedly receive the prompt consideration which the importance of the subject deserves.[10]

CONSTITUTIONAL CONVENTION.

In obedience to public sentiment in favor of a Constitutional Convention, as expressed at the election in 1886, I again recommend that provision be made, by law, for the holding of such convention. The expressed will of the people was substantially thwarted and defied by the unfortunate action of the last Legislature, and it is to be hoped that such action will not be repeated this year. The constitutional duty to provide for such convention still remaining unperformed,[b] it is clearly within the province of the present Legislature to discharge that obligation. In that respect, the same rule applies as is applicable where an enumeration or a reapportionment has been neglected by one Legislature. In such cases, any succeeding Legislature may and should perform the neglected duty.[11]

COMMITMENT OF THE INSANE.

A decided interest has lately become manifest upon the subject of the commitment of the insane. An impression seems to have been made upon the public mind that a revision of the laws of the State relating to insanity, and especially as to the manner of commitments, is urgently necessary. It is believed that this revision should be in the direction of placing greater protection about the liberty of the individual, and of preventing incarceration except upon the most indisputable evidence of its necessity. In cases of suspected insanity such safeguards should be interposed that no injustice should be done, either to those who, while not possessing full control of their mental faculties, yet ought not to be confined in an asylum, or to the people of the State, who, it is to be feared, are not infrequently burdened with the support of those who should be cared for by their relatives, or who possibly are able to earn their own living. Considerations, both of public economy and private right, require such safeguards, and as an important step in this direction the whole proceedings and testimony in commitments of the insane should be made a matter of more complete and public record.

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[10] Chapter 489, approved June 4, amending the Code of Criminal Procedure, provided for executing sentences of death by electrocution. This act was sustained in People ex rel. Kemmler v. Durston, (1890) 119 N. Y. 569; 136 U. S. 436.

[b] Const. 1846, art. 13, § 2.

[11] See 1887, veto message of May 10, and note 12, *ante*, p. 393.

Provision should also be made for immediate hearings upon applications for discharge, where recovery is alleged, without subjecting the friends of the person whose discharge is asked for to expensive and complicated legal proceedings. These hearings should properly be before a board of competent alienists. The State Board of Charities has given its consideration to this general question in its report about to be submitted to your honorable body, and I particularly call to your notice the conclusions there presented.[12]

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[12] The Constitution of 1894, article 8, section 11, required the Legislature to provide for a commission in lunacy. The insanity law of 1896, chapter 545, established a state commission in lunacy, and defined its powers and duties. The same act regulated the commitment, custody and discharge of the insane. The new law repealed former acts on the same subject. This act was sustained in Re Walker, (1900) 57 App. Div. 1; Parker v. Willard State Hospital, (1900) 50 App. Div. 622.

REFORM IN THE CRIMINAL LAW.

It is suggested that the practice on appeals in criminal cases (other than capital cases) be modified by statute, so as to permit the Court of Appeals to affirm a judgment of conviction, notwithstanding the admission of improper testimony against the accused, where the court is unanimously of the opinion that there was sufficient other and legal evidence produced upon the trial to warrant the conviction, and is satisfied with like unanimity from such legal evidence that the accused is actually guilty of the offense charged in the indictment.

Under existing practice the Court of Appeals has no discretion in such cases, but is required to grant a new trial. It is believed that the modification proposed would work no real injustice, and greatly facilitate the administration of justice, and more thoroughly and speedily insure the punishment of the really guilty.

A CONSTITUTIONAL AMENDMENT.

The Legislature last year passed a concurrent resolution proposing an amendment to Section 6 of Article VI of the Constitution, providing for facilitating the determination of causes on the calendar of the Court of Appeals. I recommend the passage of this resolution again at the present session, and the submission of the question of the adoption of this amendment to the electors of the State. The propriety of the adoption of this measure, or some other appropriate plan for the relief of the Court of Appeals in the prompt disposition of its calendar, seems to be very clear.[13]

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[13] This amendment, which added to section 6 of article 6 a provision for a second division of the Court of Appeals, was adopted again at this session, and by chapter 296, approved May 15, was submitted to the people at the general election in 1888, and approved.

The second division was organized on the 24th of January, 1889, and began its session on the 5th of March following. A large number of causes were

THE CONFIRMING POWER.

I recommend the passage of an act abolishing the power of confirmation on the part of the Senate in all those cases where it is not required by the Constitution itself.

The authority requiring appointments to be confirmed by the Senate is mainly the work of legislation. The Constitution requires that certain military and judicial officers, and, in addition thereto, the Superintendent of State Prisons and the Superintendent of Public Works, shall be appointed by the Governor "by and with the advice and consent of the Senate."[c] These are the only offices which the Constitution provides shall not be appointed without the confirmation of the Senate. Wherever such consent is necessary in reference to other officials it is by virtue of some legislative enactment which is itself the subject of modification or repeal.

The encroachments by the Senate upon the appointing power of the Executive have been gradual and persistent, until there is scarcely an important position left within his gift, which is not subject to the approval of that body. The eagerness with which this power has been grasped and retained is apparent when it is stated that, under existing laws, the Executive cannot even appoint a single notary public (except during a recess of the Senate), without the consent of that branch of the Legislature. Neither can he suspend nor remove, upon charges, any officials appointed by himself, with the confirmation of the Senate, without the consent of that body, with the exception of Civil Service Commissioners (who are properly regarded by the law

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transferred to it by the Court of Appeals, and these were all finally disposed of on the 22d day of January, 1891, and the Court then adjourned. On the same day the second division was reorganized by a new designation of judges by the Governor, and received a new assignment of causes from the Court of Appeals. The second division continued its labors until the 1st day of October, 1892, when it was finally dissolved.

[c] Const. 1846, art. 5, §§ 3, 4, am. 1876; art. 11, § 3; Jud. art. 1869, §§ 3, 9, 12.

as holding semi-confidential relations with the Executive) and one or two other officials. No matter how serious may be the charges, or how urgent the necessity for action, the Senate must be convened and its interposition invoked.

While under the provisions of the Constitution the Executive alone is empowered to suspend certain State officers,[d] although elected by the whole people; yet so carefully have the prerogatives of the Senate been protected by legislation, that he is powerless to disturb, for cause, any official, no matter how derelict he be, whose appointment is dependent upon the confirmation of the Senate, unless the Senate consents to such suspension. The history of the State shows that this power of confirmation conferred by legislation has been abused, and that it is no longer wise to retain it. There should not exist a divided responsibility in reference to such appointments. Either the Senate or the Executive should be vested with the full power and responsibility.

It is a notorious fact that for many years nominations sent to the Senate have not been disposed of upon their merits, but have either not been acted upon at all, or their disposition determined upon partisan or factional grounds. Unexceptionable nominations have been "hung up" without any action whatever. Excellent men have been rejected. Good nominees have been refused confirmation solely because of political considerations. Officials, whose terms have expired for many years, have been retained without justification or reasonable excuse, simply because they were in political accord with the Senate, or with a faction of the Senate. The confirming power has virtually usurped the appointing power by a refusal to consider nominations upon their merits. It must be assumed that such a state of affairs was never contemplated when the confirming power was first established, and it is evident that its further continuance tends to an avoidance of essential responsibility in the proper administration of public affairs, and in its practical effect operates as an obstacle to good government.

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[d] Const. 1846, art. 5, § 3, am. 1876; § 7.

A single instance only need be cited. In 1883 the Legislature passed an act "to secure an improved administration of alien immigration," abolishing the old irresponsible management, which investigation showed had become "a scandal and a reproach to civilization," and substituting in its stead a single-headed responsible official, with powers and duties limited and accurately defined, so as to prevent further scandals and abuses. Governor Cleveland, in a special message to the Legislature,* pronounced this act "the best remedial law of the session," but, unfortunately, it provided that it should not go into effect until the new official should be nominated by the Governor and confirmed by the Senate; and, although unexceptionable nominations for such new position have repeatedly been made by the Executive to the Senate during the past few years, that body has heretofore refused to confirm any of them, and the State, ever since 1883, has been deprived of the benefit of this reform legislation, and the old management, with all its most disgraceful dissensions, abused advantages and barefaced jobbery, has been perpetuated to this day.

But, whatever just differences of opinion may exist as to the propriety of a continuance of the Senate's advisory power, there can be no well-founded difference upon the proposition that while such advisory power continues, it is the Senate's duty to take some positive action within a reasonable time. Even the most urgent advocate of the prerogatives of the Senate can hardly have the hardihood to assert that it was intended to give the Senate power to obstinately obstruct the progress of the administration of important State affairs. That the Senate, as a reviewing body, may in its wisdom, under present laws, accept or reject good material presented by the Executive for the formation of a complete system of administration, is true; but that it has properly a right to altogether refuse to reject or accept material, is denied. In every practical transaction in the business world no such indefinite situation of affairs is possible, and there should be no such indefinite situation in the matter of nominations. After a nomination has been presented to the Senate and a fair time for consideration allowed, it should be provided by law that if no action is taken the nomination should stand confirmed. A like provision appears in the charters of some of our principal cities, in reference to nominations presented by the mayor to the common council, and practical experience has demonstrated the wisdom of such a provision.

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*_Ante_, vol. 7, p. 888.

Why should a different rule exist in the matter of nominations from that which prevails in the matter of legislation? Where the Governor declines to approve or disapprove a legislative bill, it becomes a law without his signature after the expiration of ten days. Why should not a like course prevail on the equally important subject of nominations? In the one case, the legislative body proposes and the Executive approves or disapproves. In the other, the Executive proposes and a legislative body is supposed to approve or disapprove. In both cases the same branches of the State government are involved.

Again, it is required by law that an appointee to office should take his oath within a certain limited period. If, at the expiration of that period, he has not made up his mind whether to accept or decline the office, his neglect to take the oath is declared by statute to be a declination, and he forfeits all right to the office. Why, in like manner, should not a refusal of the Senate to know its own mind, and to act one way or the other, within a reasonable time, upon nominations made by the Governor, be deemed a confirmation of such an appointment, and a forfeiture of its right to reject?

It is hardly necessary for me to disclaim any personal interest in this matter. Whether it should be concluded that a nomination unacted upon by the Senate should stand or fall after a limited number of days, is entirely immaterial to me. But that it should do one or the other, I am fully convinced, and I make this recommendation hardly with the expectation that the present Legislature will adopt it, but in the hope that it may be seed sown which may bear fruit some time in the future. The framers of our Constitution and the originators of the laws under discussion evidently never anticipated that a time would come when obstinate obstruction would be called statesmanship, or that men who refuse to meet fully and fairly their official responsibilities would be considered as properly discharging their political duties. We have, however, come upon such a time. The remedy is in the hands of the people, and an enlightened public sentiment should be invoked to the end that alleged representatives shall no longer be countenanced in avoiding the just demand of the people that incompetent or indifferent officials, or officials holding over indefinitely, shall give way to active, upright and vigorous successors. A law embodying the suggestions here mentioned, to take effect upon the expiration of the present term of office of the Governor, would be entirely satisfactory to me.

ENUMERATION AND APPORTIONMENT.

A measure should be enacted providing simply for an enumeration of the inhabitants of the State. This is a matter of paramount importance. The Constitution requires an enumeration every ten years.[a] It is an essential prerequisite to a reapportionment of the Senate and Assembly districts of the State, and should have been had in 1885. It has been neglected or refused each and every year since that time.

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[a] Const. 1846, art. 3, § 4.

It is true that in 1885 an act was passed by the Legislature, but which properly met with Executive disapproval,* which provided, not for a simple enumeration of the inhabitants, but for an extensive and complicated census, as elaborate as the Federal census of 1880. This was more than the Constitution required and would have cost the taxpayers of the State over four hundred thousand dollars, while a simple enumeration would have cost only eighty thousand dollars, or thereabouts.

The right of the Legislature, with the concurrence of the Executive, to direct such a costly census as that proposed in 1885, is undoubted; but without such concurrence it must fail, because such "direction" must be embodied in a law, duly enacted, and, like every other law, it must ordinarily receive Executive approval. It is conceded that the Legislature may, with the concurrence of the Executive, couple with an enumeration act any other measure it pleases — such as a scheme for the counting of the horses, cattle, sheep and goats within the State, or a census of all its insects, fruits or forest trees, or any other useless, unnecessary and expensive procedure — and the Constitution is not thereby violated. But the Legislature's constitutional duty to provide for a plain enumeration of the inhabitants, and that only, is not fulfilled by the passage of any such measure, provided it does not ripen into a law by Executive approval. If the Executive, upon grounds of economy, public policy, or otherwise, refuses to sanction any thing more than is strictly required by the Constitution, the duty of the Legislature is plain to comply with the Constitution, and not insist upon any thing more. Constitutional requirements should not be joined, confounded or confused with matters of mere utility, expediency or propriety.

It is my desire to state the issue fairly. The fact is recognized and admitted that it has been customary in the

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***Ante*, p. 66.

past to couple a census with an enumeration of the inhabitants. But it was demonstrated in 1885 by facts which were indisputable, that such a course was no longer wise, but an absolute waste of the people's money. The Secretary of State, under whose charge the last census had been taken in 1875, had recommended that thereafter there should only be an enumeration of the inhabitants. It was shown that with a Federal census taken every ten years, and with the information derived from the various bureaus which had been created during the past fifteen years for the express purpose of collecting annual statistics of every kind, any further expenditure for statistical information other than for a strict enumeration, was improvident. But the Legislature of 1885, even in the light of these conceded facts, insisted upon a State census more elaborate than any which had ever preceded it, even to the extreme of being as extensive as the Federal census of 1880. It insisted upon having that or nothing at all. No Legislature since then has passed either an enumeration or a census bill, or any bill whatever upon the subject. The Constitution has simply been set at naught and defied. It may be remarked in this connection that the value of either an enumeration or a census depends largely upon its accuracy and the promptness with which it is compiled and published. The publication of the Federal census of 1880 has not yet been completed. It is idle to regard it of any particular value to anybody when there is not a single complete printed copy to be found anywhere in the State. To attempt to duplicate such a census, so far as New York is concerned, would be a reckless squandering of the public moneys.

No good reason can be urged why an enumeration should not be had. If the Legislature and the Executive cannot agree upon a census, there ought at least to be an agreement upon a simple enumeration. There should be no discussion as to the propriety of ordering it. The Constitution requires it, and that is enough.

Fair-minded men will find it difficult to resist the conclusion that the course of previous Legislatures has been dictated by a narrow and selfish partisan policy, and that an enumeration has been refused solely because of the fact that with an enumeration would naturally follow a new apportionment of the Senate and Assembly districts of the State, and the political advantage now possessed by the party that has control of the Legislature would thereby be lost. It is to be regretted that there is much to sustain this view of the situation. The truth is that no Legislature since 1883 has represented, nor does the present Legislature, as is well known, represent the political majority of the people of the State. The existing unjust apportionment has given the minority party the control of the Legislature, and the unfair advantage is sought to be perpetuated by a refusal of the beneficiary to permit a resort to constitutional means to effect a change.

It is generally conceded that an enumeration, followed by an honest apportionment, would unquestionably result in a change in the political complexion of the Legislature of the State. A single glance at the present iniquitous apportionment discloses a motive and purpose in the neglect or refusal to permit an enumeration. In the great Democratic counties of New York and Kings, there is an average of over 50,000 population to each Assembly district, while in eight Republican counties which have over one Assembly district, the average population in each district is scarcely half that number; and in five other Republican counties having more than one district, the population hardly averages 35,000 in each district. The strong Republican county of St. Lawrence, with a population of only 85,993, has three Assembly districts, while the Democratic county of Queens, with a population of 90,547, has only two districts. The strong Republican county of Washington, with a population of only 47,874, has two Assembly districts, while the close county of Clinton, with a population of 50,901, has only one district; and the strong Republican county of

Wayne, with a population of only 51,701, has two Assembly districts, while the close county of Suffolk has only one district, with a population of over 53,000, which is nearly equal to the population of the Republican counties of Putnam, Schuyler and Yates combined; while the Republican counties of Jefferson, Chautauqua, Cattaraugus, Cayuga and Saratoga have each one more district than a fair and equitable apportionment would award them.

These inequalities are presented on the basis of the figures of the census of 1880. In view of the immense increase of population in strong Democratic counties since then, how much greater would such inequalities appear if predicated upon a present enumeration?

The refusal of the Legislature to perform its clear constitutional duty seems strange and inexplicable. Yet it should be borne in mind that this is not the first instance in the history of the State when this duty has been sought to be evaded in the same partisan interest and under the same auspices. I find that my predecessor, Governor Robinson, in his annual message in 1879, felt constrained to use the following vigorous language:*

"I regret that it is necessary for the fourth time to remind the Legislature that an enumeration of the inhabitants of the State was made in 1875, and that the Constitution imperatively requires the Legislature, at the first session after such enumeration, to reapportion the Senatorial and Assembly districts so that each shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens. The requirement that this shall be done is no more explicit than that it shall be just and equal when it is done. To make an unjust and unequal apportionment for the accomplishment of some other purpose than that intended by the Constitution is, of course, a very great and difficult labor. It requires expert skill in wrong-doing. But to make a fair and equal apportionment calls for nothing more than common sense, an acquaintance with the plainest rules of arithmetic and an honest disposition to do right. Yet in each year since the census was taken the Legislature has met, gone through its session and adjourned, without making any apportionment whatever. These facts require no comment, and I make none, except to repeat the remark made in my last annual message, referring to this subject: ' Certainly we cannot expect that the people will long continue to observe the ordinary restrictions and requirements of statute law, if their representatives who make that law utterly disregard and defy the especial mandates of the Constitution they have solemnly sworn to support.' "

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*Ante, vol. 7, p. 303.

After four years of evasion and delay, the Legislature that year performed its duty, and reapportioned the State. It is to be hoped that the present Legislature, with a higher sense of public duty, will more speedily perform the equally important constitutional obligation now awaiting enforcement.[14]

FINANCES.

The condition of the finances of the State has improved during the past fiscal year. The debt has been reduced $1,760,200 by the payment of $100,000 Niagara Reservation bonds, and $1,660,200 canal bonds.

On the 30th day of September, 1887, the total funded debt was $7,567,004.87, classified as follows:

Indian annuities (general fund)..........	$122,644 87
Canal debt	6,644,310 00
Niagara Reservation bonds	800,000 00
	$7,567,004 87
Aggregate sinking fund	4,061,188 84
Total debt unprovided for...........	$3,505,816 03

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[14] See 1885, veto of census bill April 29, and note 18, *ante*, p. 66.

This favorable exhibit shows that the State of New York is practically out of debt.

The tax rate for the current fiscal year is two and seven-tenths mills, which on the present assessed valuation will yield $9,075,046.08.

CONCLUSION.

I cordially acknowledge my indebtedness to the State officers — my associates at Albany — for the ability and zeal with which they have contributed to the successful administration of the past year.

Aside from the brief statement of the condition of the finances of the State, I have adhered to the general policy previously laid down, not to refer in detail to reports from the various departments. These reports will, however, be submitted to you within a few days, and I commend them to the attentive consideration of the Legislature and the people of the State.

DAVID B. HILL.

SPECIAL MESSAGES.

January 12. To the Legislature:

" EXECUTIVE CHAMBER,
ALBANY, *Jan.* 12, 1888.

" 'The New York State Soldiers and Sailors' Home,' at Bath, was established by the State for the purpose, as its name indicates, of providing a 'Home' for certain honorably discharged soldiers and sailors of this State who served in the Army or Navy of the United States during the War of the Rebellion. Ever since its establishment, and until the events hereinafter mentioned, the soldiers residing at such 'Home' freely exercised the elective franchise thereat as citizens of this State, their right so to do being entirely unquestioned,— the 'Home' grounds forming a separate election district created for such express purpose by the Town of Bath. But about two years ago a majority of the inmates of the Home, having, as is asserted, voted contrary to the wishes of certain politicians of such town, a scheme was concocted to question the right of the veterans to vote while residing at such Home. Accordingly, a soldier named Silvey was selected, who permitted the use of his name for the purpose of furthering the scheme, and with the consent and connivance of the Town Board, the said Silvey, and certain lawyers (all of the same political faith, and having the same object in view), caused the vote of Silvey to be offered and rejected at a town meeting held in February, 1886; and thereafter a certain 'statement of facts' was agreed upon between the said parties, and upon such statement the question of the right of Silvey to vote at the said election was submitted (under the provisions of the Code of Procedure) for the decision of the General Term of the Fifth Judicial Department of this State. It was to all intents and purposes an *ex parte* proceeding. It is represented that although such 'statement of facts' was partial, unfair, artfully worded and cunningly devised, and by its concessions and concealments was intended to present a case absolutely requiring a decision against Silvey, the General Term unexpectedly, and to the disappointment of those engaged in the plot, sustained the right of Silvey to vote at the Home. Thereupon, in further aid of the scheme, an appeal was taken to the Court of Appeals, which court, acting solely upon the facts as they had been agreed upon between said parties, and being wholly bound thereby, was constrained to decide against Silvey.

It is now claimed that the decision in reference to Silvey's voting necessarily determines the right of every other soldier at the Home, although the other soldiers were not parties to the controversy, their counsel was not heard in relation thereto, and the facts were 'agreed upon' by parties who were all adverse to the rights claimed by the veterans. The manifest purpose of the whole one-sided proceeding was to procure a decision against the veterans, and it seems the plan was successful.

The facts ' agreed upon ' which were presented to the Court were designedly so shaped and colored as to make it appear that the ' Home ' was an ' almshouse or other asylum ' within the meaning of Section 3 of Article II of the Constitution, which prohibits inmates of such institutions from acquiring a residence at the places where they are located. It is submitted that the people of the State in establishing a permanent ' Home ' for their veteran soldiers, did not intend to place them upon a par with paupers, idiots or lunatics, but intended that they should exercise and enjoy thereat all the privileges of citizenship.

It is believed that it is within the province of the Legislature of the State to determine the character of its own institutions which it creates, and by legislative act to declare the nature and *status* of the Soldiers' Home so that it cannot be deemed an ' almshouse or other asylum ' within the meaning of the Constitution. It is evident that such an institution as the Soldiers' Home was not contemplated when the constitutional prohibition in question was framed, and the Legislature should by declaratory or other appropriate legislation proceed to protect and confirm these veterans in the exercise of their rightful prerogatives as citizens of our State.

It is understood that about one hundred and fifty of these veterans voted at the Home at the election in November last, and have recently been indicted therefor by a local grand jury, at the instance of the same parties who instituted the Silvey suit.

Prompt attention to this subject seems to be demanded, and I cannot believe the Legislature will refuse to exercise its proper functions to prevent the consummation of the outrage involved in the prosecution of these veterans, and to remedy the wrong sought to be perpetrated in refusing to permit them to vote at the only 'home' and residence which they can call their own.

It should further be stated that prior to the decision of the Court of Appeals, two attorney-generals of the State, upon a full, fair and candid statement of the facts applicable to the Home and its inmates, had decided that the veterans had a right, under existing laws, to vote at such home.

Additional legislation seems, however, to be required, or at least desirable, to the end that the right of such veterans to vote at the "Home" may be established and settled by an express statute. There can be little doubt of the power of the Legislature to declare what shall constitute a residence in such cases, and the propriety of its exercise in favor of these veteran soldiers is too clear for argument. At least there ought not to be any reasonable objection on the part of any one to their voting at the 'Home' for all National, State and other officers not strictly local in their character.

The whole subject is commended to the careful consideration of the Legislature.*

DAVID B. HILL."

January 24. To the Assembly: Transmitting the annual report of the Adjutant General, and the report of the Cooper Union.

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* The case of Silvey v. Lindsay may be found in 107 N. Y. 55.

The Constitutional Convention of 1894 considered the subject of voting residence, article 2, section 3, and a history of the Silvey case was given during the discussion of this section. The convention modified the section by making it applicable to a person "kept at any almshouse, or other asylum, *or institution wholly or partly supported* at public expense *or by charity*." The words in italic are new.

The Court in the Silvey Case said, speaking of the soldier's status at the Home, that his "presence there was eleemosynary in its character;" "as to the Home he was a beneficiary, and nothing else. As to Bath, his residence was a beneficiary's residence, and no other."

January 30. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 30, 1888.

"I have the honor to transmit herewith two communications in writing which the Trustees of Public Buildings have received from Eidlitz, Richardson & Company since the adjournment of the last Legislature.

They are transmitted to your honorable body because they are believed to be the communications which you desire, although I do not understand that Eidlitz, Richardson & Company are still architects of the New Capitol, or that they have been connected with the building in that capacity since the adjournment of the last session.[15]

DAVID B. HILL."

The following are the communications referred to in the Governor's message: (Assembly Doc. No. 46.)

"OFFICE OF LEOPOLD EIDLITZ, ARCHITECT,
128 BROADWAY, NEW YORK, *January* 9, 1888.

To Hon. DAVID B. HILL, Hon. EDWARD F. JONES, Hon. FREMONT COLE, Trustees of Public Buildings, and Hon. CHARLES B. ANDREWS, Superintendent of Public Buildings:

GENTLEMEN.—We beg to refer you to our communication of May 25, 1887, addressed to your honorable body, a copy of which is hereunto annexed. In view of the fact that during the past seven years our repeated requests for the correction of existing defects and deficiencies in the condition of the Assembly Chamber and its vaults, and for the completion of their construction, as well as our urgent recommendations that the condition of the north wing of the Capitol, including the Assembly Chamber, shall be reexamined and reported upon, by competent persons besides ourselves, have not been acted upon, and all reasonable expectation of such action being exhausted, we cannot, in reason, be held responsible for possible accidents. But, inasmuch as, by reason of the long neglect above referred to, such accidents are possible, we deem it our duty to respectfully protest against the further occupancy of the north wing of the Capitol in its present condition; and we request that you will direct that the Assembly Chamber, the State Library and the offices in that part of the building, be closed until definite action, in accordance with our repeated recommendation, shall have been taken.

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[15] Chapter 41, passed March 3, 1888, made an appropriation for the expense of temporarily shoring up the ceiling of the Assembly Chamber.

Chapter 582, approved June 9, provided for a committee of the Assembly, to be composed of the Speaker and four others, appointed by him, whose duty it was to supervise certain alterations in the Capitol, including the removal of the ceiling of the Assembly Chamber, and the erection of a suitable ceiling.

Very respectfully,

EIDLITZ, RICHARDSON & CO.

To Hon. DAVID B. HILL, Hon. EDWARD F. JONES, Hon. JAMES W. HUSTED, Trustees of Public Buildings, and Hon. CHARLES B. ANDREWS, Superintendent of Public Buildings:

GENTLEMEN.—During the past eight years various communications made by us to the present Commissioner of the Capitol, and to his immediate predecessors, relating to the completion of the Assembly Chamber vaults, to the regulating of their equilibrium, and to repairing injuries done by the long neglect in doing this necessary work, have not been acted upon.

The reason why these communications were not acted upon, is, we are assured by the Commissioner, that he has no power in the premises by reason of chapter 295 of the Laws of 1882, which withdrew the Assembly Chamber, together with other parts of the building (by that law declared to be completed), from the care and supervision of the Capitol Commissioners and placed them in the hands of the Clerks of the Senate and Assembly and other State officers, and by reason of chapter 349 of the Laws of 1883, which created the Trustees of Public Buildings, who are now entrusted with the care of the so-called completed portions of the Capitol.

Being left without power or authority to carry out the work which we deem absolutely necessary for the preservation of the Assembly Chamber, we desire by this communication to your honorable body to exhaust the last possible resource left open to us whereby our recommendation in the premises may be officially recognized.

We herewith repeat the request, heretofore made, of the Commissioner of the Capitol, that you appoint one or more competent persons conversant with the theory of arches, who shall, in connection with us, examine the vault of the Assembly Chamber, who shall report upon its condition, and recommend such repairs as are necessary to perfect its construction.

" The Assembly Chamber," we say in our last report to the Commissioner of the Capitol, " should not be given up to decay, nor should its reputation be permitted to be assailed for want of an intelligent and authoritative expression of opinion as to its actual condition, or for want of the necessary funds to complete its construction and keep it in repair."

Our professional reputation should not be permitted to be assailed, nor should we be held responsible for the integrity of the work while our recommendation to do necessary work for its completion and make necessary repairs for its maintenance are not acted upon.

Submitting all this to your favorable consideration, in the hope that you will take such action as the case deserves, we are,

Yours, very respectfully,

EIDLITZ, RICHARDSON & CO.

Dated. Albany, May 25, 1887.

February 27. To the Assembly:

Veto of a bill entitled "An act to authorize the commissioners of Auburn, New York, appointed in pursuance of the provisions of chapter 433 of the Laws of the State of New York, entitled 'An act to facilitate the construction of the Southern Central Railroad and to authorize towns to subscribe to the capital stock thereof,' passed April 7th, 1886, and the several laws supplementary thereto and amendatory thereof, to borrow money and issue bonds of said city to pay interest upon outstanding bonds of said city and to stipulate for an extension of the time for the payment of the principal of the bonds thereof maturing March 1st, 1888."

" This bill illustrates the evils of hasty legislation.

It was passed in both houses on the same day, which was the day of its introduction. It was never printed nor referred to any standing committee in either house nor considered in Committee of the Whole, but was ordered to a third reading and passed immediately upon its presentation.

Upon investigation it appears that the bill was not desired by the citizens of Auburn. They knew nothing of its contents, and were never consulted concerning its introduction. The City Supervisors, as well as the Mayor and other local authorities, protest against its approval, and assert that the bill is not in the interest of the people, but for the especial benefit of certain railroad commissioners of the city and their sureties.

It is unnecessary, however, to determine this question, or to discuss the actual merits of the measure. It is conceded to be special legislation, and in such cases in order to secure Executive approval, measures of this character should at least be urgently required and fully sustained by public sentiment.

For these reasons the bill is objectionable and cannot be approved."

The bill was not passed over the veto.

February 27. To the Assembly: Transmitting the annual report of the Board of Commissioners of Pilots, and the annual report of the State Commissioners of Health.

March 9. To the Senate: Transmitting the following communication from the New York Historical Society:

MEMORIAL.

To the Governor, the Senate, and the Assembly of the State of New York:

The New York Historical Society most respectfully submit to your excellency and your honorable bodies, the propriety and especial fitness of a suitable civic commemoration of the centennial anniversary of the adoption by the State of New York of the Constitution of the United States, which will occur on Thursday, the 26th day of July, 1888.

One hundred years ago on that day, at the city of Poughkeepsie, in the county of Dutchess, New York, by a vote of thirty to twenty-seven of the most distinguished of her sons, in convention assembled, entered the circle of the United States of America. She did it reluctantly, and only on condition that certain amendments, which she specified, should be made and submitted to the different States. They were so submitted, were approved by a majority of the States, and in consequence of this action of New York, the Constitution became the efficient, powerful and benign instrument, by which, under God, the American Union in one short century has become the most flourishing, as well as one of the greatest of the nations of the world.

In that convention at Poughkeepsie sat all the great statesmen of New York of that generation, of all opinions and of all parties, and to their labors and their action the State and the nation owe all that they are to-day.

It will be but a slight evidence of gratitude for their present successors, the Governor, and Lieutenant-Governor, the Senate, and the Assembly, to meet informally on the twenty-sixth of July next, at the old historic town upon the Hudson, and there, with the mayor and aldermen and people of Poughkeepsie, and those whom a joint committee of all these bodies, with the Governor, may invite, and listen to a commemorative address which such committee shall request the chief justice of the State to deliver in the presence of his brothers of the Court of Appeals, before the Governor, the two houses, the city authorities and the assembled people.

Therefore, it is suggested and requested, that such public action be taken by the Governor, the Senate and the Assembly on this subject as will be consonant with the importance of the event and with the dignity of the State and the six millions of its people, who owe all their prosperity to the action of the New York constitutional convention of 1788.[16]

[L. S.] JOHN A. KING,
President.

ANDREW WARNER,
Recording Secretary.

Hall of the Society, New York, March 6, 1888.

March 15. To the Assembly:

Veto of a bill entitled "An act to amend chapter 466 of the Laws of 1866, entitled 'An act in regard to normal schools.'"

"From such examination as I have been enabled to give this bill, I am not convinced of the wisdom of the change proposed. The amendment appears to be in the direction of an unnecessary relaxation of a salutary rule established by the present statute. The incorporation of this new matter into the section amended, without changing the subsequent wording of the section, has, probably, by inadvertence, left the section open to the construction that the free privileges of instruction, use of books and apparatus, are confined to only a part of the normal school pupils, namely, those who pass the actual preliminary examination before the teachers of the school.

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[16] On the 9th of March the Senate adopted a resolution, which was concurred in by the Assembly on the 15th, providing for the appointment of a joint committee to consider the memorial of the Historical Society relative to the Centennial of the ratification of the Federal Constitution.

On the 10th of May another resolution was adopted by the Senate, which was concurred in the next day by the Assembly, providing for the appointment of seven senators and ten members of the Assembly to "attend the celebration of the centennial of the adoption by the State of New York of the Constitution of the United States at Poughkeepsie on the 26th day of July, 1888, as representatives of the Legislature," and to co-operate with such local committees or representatives of historical or other associations as may be appointed in making arrangements for said celebration."

The celebration was held at Poughkeepsie on the 26th of July, 1888.

It may well be doubted whether the school laws would be improved by this amendment.

It is proper, however, that it should be stated that by reason of the storm of the last three days I have been deprived of the opportunity of any consultation with the author of the bill, but as the constitutional limitation of ten days expires to-day, I am compelled to take action at this time."

The bill was not passed over the veto.

March 15. To the Assembly:

Veto of a bill entitled "An act to amend chapter 546 of the Laws of 1887, entitled 'An act to provide for the organization of trust companies, for their supervision and for the administration of their affairs.'"

"The object sought to be accomplished by this amendment is to authorize the organization of trust companies in villages, the population of which does not exceed ten thousand inhabitants, with a capital of fifty thousand dollars.

I do not think the amendment is an advisable one. The general act for the incorporation of trust companies was passed last winter, after great deliberation, and after the subject had been discussed for several years, and it required that no trust company should have a capital of less than two hundred thousand dollars. This was an eminently proper restriction, and I do not think it can be removed with safety to the vast interests involved. The greatest safeguards possible should be thrown around the organization of such companies, intrusted as they so frequently are with the estates of widows and children and the custody of trust moneys in large amounts, especially in view of the fact that their capacity to incur liability is substantially unlimited.

There is no great necessity or demand for trust companies in villages, and if they are desired to be used practically for banking purposes, as they frequently are, banks which are authorized to be organized with a capital of fifty thousand dollars will satisfy the public needs in that direction.

This bill has been submitted to the Superintendent of the Banking Department, who disapproves of the proposed amendment.

The storm of the last three days has prevented the opportunity of a hearing upon this bill, which I would gladly have given, although I am inclined to think that no arguments which could have been presented would have changed my views as to the impropriety of this measure. The constitutional limit of ten days expires to-day, and I am, therefore, compelled to take action now."

The bill was not passed over the veto.

March 15. To the Assembly:

Veto of a bill, entitled "An act to authorize and empower the town of Harrietstown, in Franklin county, to issue bonds for the purpose of purchasing a site and erecting thereon a town hall."

"This legislation seems to be unnecessary. The constitutional amendments which were adopted in 1874 provided as follows:

"The Legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as the Legislature may from time to time deem expedient."[f]

The Legislature, by chapter 482 of the Laws of 1875, and the amendments thereto since made, conferred additional powers of local legislation upon boards of supervisors, and provided among other things that boards of supervisors might call special town meetings to consider and decide any questions upon which the electors of the town might be called to take action, and such boards were expressly empowered, upon the application of any town, to authorize such town to purchase a site and to erect a town hall, and to raise whatever money may be necessary for such purposes, either by the issue of bonds or otherwise.

This statute seems to be broad, and entirely sufficient to cover all the purposes desired to be accomplished by this bill. The Legislature should not interfere by special legislation where boards of supervisors have ample powers of local legislation to accomplish the same results. It is no answer to say that it is inconvenient to convene the board of supervisors for such minor objects. The theory of the constitutional amendments was that the great legislative body of the State should be relieved from the consideration of such matters.

I regret that I cannot consistently approve this measure."

The bill was not passed over the veto.

March 15. To the Assembly: Transmitting the annual report of the Civil Service Commission.

March 16. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 16, 1888.

"The importance and necessity of a thorough revision and amendment of the Excise Laws of the State has long been apparent. My attention has lately been particularly called to this subject by the Board of Commissioners of Excise of the City of New York. Aware from personal experience in the courts, as every lawyer must be, of the confused and unsatisfactory condition of these laws, I have been led to give special consideration to the communication of this board, and to the letter, upon which it is based, addressed to them by their counsel who concisely and forcibly presents the situation, at least so far as New York city is concerned.

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[f] Const. 1846, art. 3, § 23, am. 1874.

The partial or imperfect general Excise Law now in force was passed in 1857. This act started anew, repealing in definite terms all previous similar acts. In 1857 our population was about 3,500,000. Now it is nearly 6,000,000. With this great and year by year enormously increasing population tending more and more to concentration in immense cities and populous towns and villages, inevitable and decided changes have come in the conditions under which the Excise Laws must be administered. Restraints and regulations then enforceable are not now effective. Provisions then applicable are not now appropriate or suited to large bodies of our most industrious citizens. These changed conditions are not the result of one year nor of ten. They are the outgrowth of the life of a whole generation, for it must be continually borne in mind that it is thirty-one years since the present partial or imperfect general Excise Law was made the law of the State.

To meet the demands of these changed conditions, habits and opinions of our people numerous enactments have, year after year, been placed upon the statute books, in the endeavor — in which every good citizen joins — to mitigate the evils of intemperance in the use of intoxicating liquors. But these numerous laws have generally been framed to meet particular and immediate phases of the larger question involved, and not with the view of forming a symmetrical and complete Excise Law. There are independent acts; there are supplementary acts; there are amendatory acts, and thus confusion and inequality have been introduced and perpetuated in a department of the statute law which, affecting as it does the habits and customs of the daily life of so many of our people, should be most clear and just.

That our Excise Laws are not now fair, plain and positive is apparent to the most superficial examination. Since the law of 1857, which, as has been said, laid a new foundation, the additions have been most diversified in character. Some of them are entirely separate and distinct. They refer to no other excise law; they amend no other excise law; they repeal no other excise law; yet they are a part of the excise regulations of the State. Besides these separate acts there are as above stated many supplemental and amendatory acts. Of these supplemental and amendatory provisions some are obscure and others are conflicting. So obscure and so conflicting are they that even the most experienced compilers of our statutes have been with all their learning utterly unable to reconcile these laws and to enlighten the people for whose guidance such enactments were made.

The communication referred to very properly says:

'In this mass of disconnected, piecemeal, fragmentary, intricate and incongruous legislation even the student becomes lost and dismayed in an effort to reach a coherent analysis of these laws notwithstanding many judicial determinations running through the past thirty years.'

Certainly such laws should not depend upon nor require the constant interpretation or interference of the courts, nor necessitate an action brought to determine their meaning. On the contrary, he who runs should be able to read. All who live and work within the Commonwealth are entitled to have their rights and privileges, where specifically laid down in the written law, guarded by language that is intelligible. And these laws should be more than merely intelligible. They should be harmonious in their operation and easily comprehended by those whose duty it is to enforce or obey them.

The necessity for the revision suggested has often been recognized. My predecessors in their annual messages have repeatedly called the attention of the Legislature to this subject. Governor Robinson said in 1878:*

'The state of our excise laws seems to demand attention. Recently our highest court was called upon, in a case brought before it, to declare what the conditions are under which licenses to sell spirits in small quantities may be granted. Its conclusion was contrary to the construction under which the officials administering the law had acted generally by legal advice, for some years past. It may be said the provisions now in force were found not to be such as the public generally had supposed them to be. The pains taken by the court in discussing the question proves that it is one of some intricacy. The doubt was due to there being too many laws on the subject in force at the same time; and the consequent necessity of resorting to older statutes in order to find the meaning of more recent enactments and of deciding where the old and the new law conflicted, and to what extent repealing clauses operated. If, under such circumstances, dealers erred in construing their privileges, it would not be just to hold them to penalties as for a willful violation of law. The Legislature is bound to make its enactments explicit and easy to be understood. The decision of the court, although undoubtedly correct, was a surprise, and caused much excitement among all interested. Its enforcement, no doubt, was accompanied by hardships. What is needed is to substitute for all existing laws on the subject a carefully prepared statute, reasonable in its limitations and restraints, clear and explicit in all its provisions, and, above all, complete in itself; to be uniformly, steadily and constantly enforced.'

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*Ante, vol. 7, p. 163.

Governor Robinson said in 1879:*

'Again, as in my last annual message, I advise that you devote careful attention to the condition of our excise laws. No branch of our law needs to be so simple, concise and intelligible as this. * * * * * The law is transgressed as often from ignorance as from design. Punishment is oftener inflicted for its accidental than intentional violation. Continual appeals are made to the Executive to relieve the errors of its working. These clumsy complications are unworthy an intelligent people.

It is true that the subject of excise law presents a great social problem, but it is also true that a sensible and practical solution of it may be reached if its discussion be approached in an impartial and unprejudiced spirit. I commend the whole matter to your reflection as one of the most important likely to be brought before you, and suggest that you substitute a clear, symmetrical and complete statute for the present laws on the subject.'

Governor Cornell said in 1880:†

'Much dissatisfaction prevails in regard to the Excise Laws, and it is essential that some effort be made to render them more effective. The laws are constantly violated or evaded, and inadequate attention is given to their enforcement. Indeed, the chief difficulty seems to be to determine the scope or meaning of the existing statutes on this subject. Under recent and somewhat conflicting decisions Excise Commissioners are left with large discretionary powers. The will of the commissioners is substituted for the

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**Ante*, vol. 7, p. 310.

†*Ante*, vol. 7, p. 435.

mandates of law, hence conflicting interpretations obtain within the jurisdiction of the different Boards of Excise. What is needed is a carefully matured act that can be plainly understood and faithfully executed. Although beset with difficulties, it is your duty to seek an intelligent solution of the matter.'

Governor Cornell said in 1881:*

'The interests of good government demand a thorough revision of the Excise Laws. The opponents of the liquor traffic, as well as those engaged in the business, believe that a change from the present chaotic condition is desirable. The existing enactments are ambiguous and inefficient in their operation. Conflicting opinions of the courts have added to the confusion. In consequence thereof, the officers who should enforce the laws find themselves paralyzed. For three consecutive years the annual messages of the Governor have contained recommendations for an entire revision of these laws; and the subject is again presented in the earnest hope that it will receive your patient consideration and wise action.'

Yet up to the present time no such general revision so repeatedly advised has been made.

For two years past legislation affecting the sale of liquor has been under active discussion. Various changes have been suggested and advocated. Yet, so far, little has been accomplished in definite results, and what the future may bring forth is uncertain, although this subject is receiving unusual attention, and there is an expectant demand for some improvement in the Excise Law. It seems to me the time has arrived when this whole subject should be vigorously, carefully, exhaustively and effectively considered. The general and decided interests therein renders the opportunity favorable for action beneficial to the people of the whole State.

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*Ante, vol. 7, p. 531.

It has been proposed that a commission should be constituted to report a revised Excise Law to the Legislature of 1889. This proposition meets with my approval.

In the haste and confusion of the session, members of the Legislature, however well equipped and qualified for such service, are not able to fulfill the requirement of such a revision. It needs, too, a patient hearing of arguments from all sides in an atmosphere free from partisan influences, and this, no matter how fair the intention of the legislative committee may be, it is difficult to obtain. Such a commission as I have suggested should be made up of men of recognized knowledge and high character; men whose conclusions would be received with profound attention and respect. Such a commission, while being representative in its composition, should have upon it no man of extreme views. Its members should be men having capacity to dispassionately and equitably consider the rights, interests, privileges, wishes and requirements of all the people, in order that the results of its deliberations may be fair and just to all. Upon it should also be placed some one skilled in the science of revision, and thoroughly acquainted with the decisions of the courts upon the language heretofore used in Excise Laws.

The expense of a commission should not stand in the way of its authorization. The questions which would there be patiently and solicitously weighed affect more or less directly every citizen and every industry in the State. Nor should the consideration of the measure here contemplated necessarily interfere with any bill upon the general subject now before the Legislature. I have observed that there are numerous bills pertaining to the Excise question already upon the files awaiting action, and should any of them become laws they will come before the commission for incorporation in the revision.

I, therefore, recommend the passage of a bill which will provide for a commission to report to the Legislature of

1889 a Revised Excise Law, broad in its scope, complete in its details, and comprehensive in its application; believing that a law framed under the auspices of such a commission as I have indicated would be approved by the next Legislature, and would subserve the highest interests of the people, and promote a better administration of the laws of the State.[17]

DAVID B. HILL."

March 16. To the Assembly:

Veto of a bill entitled "An act to authorize the town of Parishville, St. Lawrence county, to borrow money and build a town house in said town."

" This legislation is not necessary. All the objects — of any especial consequence — sought to be accomplished by this bill can be attained by the joint action of the town authorities and the Board of Supervisors of the county. It is difficult to understand why this and similar bills should be constantly pressed upon the attention of the Legislature when the authorities at home have ample powers in the premises, without the necessity of any interference on the part of the Legislature.

I have refused my assent to many similar bills during the past three years, and cannot now approve this one. A bill to authorize the construction of a town building in Middletown was vetoed by me upon precisely this same ground on April 10, 1885, and the reasons then presented still remain unanswerable.* Governor Robinson, on May 3, 1877, vetoed a bill for the rebuilding of a town hall in Mexico, Oswego county, upon similar grounds.†

It is submitted that it is the duty of the Legislature to encourage home rule in regard to all local matters, and especially in reference to local public improvements, rather than invite legislative interference by establishing a precedent for measures of this objectionable character. This bill violates a general principle which I have endeavored usually to follow, and no tenable ground seems to exist for creating any exception to it in this instance.

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[17] See *post*, p. 640, for a committee report and other matters relating to excise.

**Ante*, p. 61.

†*Ante*, vol. 7, p. 71.

There are several thousand towns and villages in the State of New York, and if application must be made to the Legislature every time one of these towns or villages desires to erect a town hall or other public building, and the Legislature entertains such applications, there is an end practically to local self-government, and our session laws would be crowded with enactments of no general interest or especial value. The propriety of non-interference by the Legislature in such cases is too clear for argument. Boards of Supervisors are intended, by the provisions of the amended Constitution,[g] to be the local legislatures of their respective counties in reference to minor matters relating to towns and villages, and if there are any towns, villages or counties in the State which do not for any reason desire to avail themselves of the powers of local legislation expressly established and conferred for their benefit upon their own local authorities, their public improvements must remain in abeyance until the Legislature shall see fit to change the general laws of the State.

I am convinced that the people of the localities affected by this class of legislation would much prefer to have such measures as this acted upon by their own officers when they fully understand that there is no real necessity for interference from Albany. In the end they will be satisfied that this is the best course to be pursued."

The bill was not passed over the veto.

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[g] Const. 1846, art. 3, §§ 22, 23.

March 19. To the Assembly:

Veto of a bill entitled "An act to legalize the official acts of Gabriel Reevs as commissioner of deeds in and for the city of Yonkers, Westchester county, New York."

"On February 17, 1887, I refused to approve a general act entitled 'An act to legalize the official acts of certain justices of the peace.' On February 28, 1887, I declined to approve a general act 'to legalize and confirm the official acts of notaries public,' and on April 29, 1887, I returned without aproval a specia bill to approve the the official acts of a single notary public, who had exercised the duties of the office after the expiration of his term.*

For substantially the same reasons set forth in the several messages returning such bills last year, to which the Legislature is now respectfully referred, I cannot consistently approve the bill in question."

The bill was not passed over the veto.

March 26. To the Assembly:

Veto of a bill entitled "An act to create a water board, to establish and maintain a water department in the village of Westfield, to supply pure and wholesome water, and to authorize the issue of bonds in the name of said village for such purpose."

"This bill seems to be unnecessary special legislation. Chapter 181 of the Laws of 1875, which is a general act applying to all villages, already makes ample provision for the construction of water-works by village authorities and for issuing the bonds of the village therefor. This general act has stood the test of experience and has been carefully amended where such experience has shown it to be defective. The original act of 1875 provided that the village trustees should be water commissioners.

**Ante*, pp. 334, 387.

The main purpose of this bill is, apparently, to appoint specific persons named in the bill, as such water commissioners, instead of the trustees, and to provide for the election of their successors. If such was its purpose, the bill would appear to have been drafted in ignorance of the amendment to the general act by Chapter 170 of the Laws of 1885, which already allows all villages, including the village of Westfield, to elect other persons than the village trustees to be water commissioners.

The naming of officials in legislative acts is manifestly improper, except where they are named for temporary purposes only. Permanent officials for the State, other than those elected by the people, should mainly be appointed by Executive authority, and local officials should be appointed by local authorities, and not by the Legislature.[h] These are correct principles of legislation which should generally be followed.

If the experience of the village of Westfield has proven the general act defective, then that act should be amended accordingly. There are so many villages in this State, that to commence making special exceptions in favor of any one village from the general law applicable to all, would lead to an endless mass of special acts, in most cases less carefully guarded than the already existing general law."

The bill was not passed over the veto.

March 29. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *March* 29, 1888.

"The recent death of one Quarantine Commissioner and the ouster from office of another by the courts, have occasioned two actual vacancies in those positions. The term of office of the remaining Commissioner also expired several years ago.

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[h] Const. 1846, art. 10, § 2.

On February 13th last I had the honor of transmitting to the Senate the nominations of General McLeer, of Brooklyn, and James H. Breslin and Arthur Leary, of New York, to fill such vacancies and such other term.

Although over six weeks have since elapsed, no definite action has yet been taken upon such nominations. They have neither been confirmed nor rejected, nor considered in the Senate.

One Quarantine Commissioner cannot legally transact any business, and the public interests require that the existing vacancies should be promptly filled.

The nominees are conceded to be gentlemen of capacity, integrity, and eminent fitness for the positions in question, and two of them are in political accord with the majority of the Senate. It may further be stated that the nominations have met the approval of the press of all parties, and numerous posts of the Grand Army of the Republic have especially requested the confirmation of General McLeer, a gallant one-armed Union veteran who by the laws of the State is given a preference for public position.

The Constitution and the laws impose upon the Executive the duty of making nominations to the Senate in cases of vacancies and where terms of office have expired, and that duty he may neither evade nor refuse to perform.

It is respectfully submitted that it is equally the duty of the Senate to act upon such nominations one way or the other. If they are good nominations they should be confirmed; if they are bad ones they should be rejected.

A reasonable time having elapsed since the nominations in question were transmitted to your Honorable Body, and the public interests requiring prompt consideration, I respectfully ask that such nominations may be acted upon without further unnecessary delay.

DAVID B. HILL."

April 5. To the Assembly:

Veto of a bill entitled "An act making an appropriation for building about thirty-eight hundred lineal feet of vertical wall on the berme side of the Erie canal, in the county of Herkimer, from the westerly end of the canal aqueduct, in the village of Ilion, to a point three hundred and fifty feet west of the first iron canal bridge west of said aqueduct."

"I object to that portion of the bill which absolutely requires the Superintendent of Public Works to cause the work contemplated by the bill to be done by contract.

Such a provision is unusual except where large appropriations are made. Aside from such instances it has always been customary to leave the method of the performance of the work to the wise discretion of the Superintendent. There does not seem to have been any complaint of any abuse of such discretion on his part in the past and no reasonable apprehension of any in the future need be entertained. The Superintendent usually has such work performed by contract, but he ought not to be arbitrarily bound so to do unless, in his judgment, the best interests of the State will be likely to be subserved thereby. This has been the true policy of the State heretofore, and no good reason can be urged why it should now be changed.

The objectionable clause was not contained in the bill when it was introduced or when it first passed the Assembly, but was inserted in the Senate, in pursuance of what would appear to be a narrow and ill-advised policy. I have carefully examined the Session Laws enacted during the administration of Governor Cornell, while Silas B. Dutcher was Superintendent of Public Works, and find that during that whole period no such restriction was ever inserted in any bill relating to an appropriation for public work on the canals, but that the method of performance was always left to the sound discretion of Superintendent Dutcher.

I can discover no adequate reason why the policy then pursued, without objection from any quarter, should not now be followed, and am loth to assume that partisan considerations have induced the proposed change.

There may be a few instances where it is clearly apparent that beyond all question the work can best be done by contract, and in such cases if the Superintendent of Public Works shall so be satisfied, I have no objection to permitting a bill to become a law containing such a provision as the one in question, although such a provision is unnecessary and furnishes a precedent of doubtful propriety.

It may be safely assumed that the Superintendent will in all cases protect the interests of the State, but if always absolutely required to perform the work by contract and to always accept the lowest bidder (and without the usual reserved right to reject any and all bids), the interests of the State are liable to be jeopardized by a combination among bidders and by many unforeseen circumstances, and the work thereby greatly delayed.

The work proposed to be done under this bill can best be performed by the Superintendent, because, among other reasons, it should be done at once, or before the opening of navigation, and there is not sufficient time for such purpose if there must be a delay for the proper and usual advertising before a contract can be let.

I am satisfied that, upon further consideration, the Legislature will not insist upon a policy which is without precedent in reference to appropriations of the amount and relating to work of the character contemplated by this bill."

The bill was not passed over the veto.

April 9. To the Assembly:

Veto of a bill entitled "An act to amend chapter 438 of the Laws of 1877, entitled 'An act to create a police pension fund for disabled and retired policemen in the city of Brooklyn,' as amended by chapter 632 of the Laws of 1886."

"By the Brooklyn Police Pension Fund Act, as now in force, a member of the police force or attaché of the police department, who has performed police duty for a period of twenty years, can participate in the police pension fund. The first and most important change proposed by this bill is the addition of commissioners of the police department to the persons who are to receive pensions from said fund. This change may not have been intended by the framers of the bill, but is, nevertheless, clearly effected. This is a radical departure from the fundamental theory of police pension fund acts in the various cities of this State. The theory of these acts is that persons in actual police service, like soldiers in time of war, are exposed to unusual dangers, and are often called upon to risk their lives in the performance of duty. The commissioners of the police department incur no such risks. No reason can be conceived why a commissioner of the police department, who has served twenty years as such, should be any more deserving of a pension than a commissioner of education or other similar officer. Pensioning such officers I believe to be wholly unprecedented in this country, and altogether foreign to the spirit of our institutions.

The second change proposed by this bill is to make nineteen years of aggregate service as member of the police force and as commissioner of the police department equivalent to twenty years' service as member of the police force for the purpose of receiving a pension. The limit of service to entitle to a pension has been long fixed at twenty years, and has heretofore proven satisfactory. If a beginning is now made by reducing such period for the benefit of one special case, however deserving such case may be, further applications will be constantly pouring in for still further reductions. It is respectfully submitted that the present requirements of actual police duty for the full period of twenty years should continue to be maintained.

This bill is opposed by the local authorities and by many citizens of Brooklyn, who urge, in addition to the foregoing, still other serious objections. But it is believed the reasons above specified make it sufficiently clear that this bill ought not to become a law.''

The bill was not passed over the veto.

April 10. To the Senate:

Veto of a bill entitled "An act in relation to the salaries of sergeants and detective sergeants of police in the city of New York." [18]

'' The first objection to this bill is that it should be an amendment to the Consolidation Act of the city of New York, instead of a distinct and independent measure. This objection could, however, be obviated by a recall of the bill.

The second objection is that the bill is mandatory, and vests no discretion whatever in the local authorities to determine the proper salaries to be paid the officers named in the bill.

Such legislation, though common enough some years ago, has recently been steadily opposed by the local authorities, and has been uniformly disapproved by me.

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[18] This bill was not passed over the veto. Chapter 350, approved May 22, amended the act of 1887, chapter 572, authorizing the fixing of salaries of sergeants and detective sergeants of police in the city of New York, by adding a provision authorizing the board of estimate and apportionment to amend the appropriation for the police department in any year by adding the increase of compensation for members of the force as directed under the act of 1887.

In 1886 a mandatory act was passed by the Legislature raising the salaries of police captains from $2,000 to $2,750. This bill was opposed and was vetoed on April 14, 1886.* Subsequently, at the same session of the Legislature, an act was passed authorizing the Police Commissioners, with the concurrence of the Board of Estimate and Apportionment, to fix the salaries of the captains. This bill was signed, and became Chapter 450 of the Laws of 1886. The Board of Estimate and Apportionment, acting under the authority thus conferred, subsequently fixed the salary at $2,750, at which figure it now stands.

In 1887 the Legislature passed and the Governor approved a bill now known as Chapter 572 of the Laws of 1887, authorizing the salaries of sergeants and detective sergeants to be fixed in the same manner that captains' salaries are fixed. That act was not mandatory, but left with the local authorities the power of determining the salaries within certain limits, and hence was not objectionable. The Board of Estimate and Apportionment has not yet definitely acted upon the salaries of these officers.

It is needless to present at length the objections to such legislation as is now proposed. The unanswerable argument against it is presented in the veto message of the Governor before referred to, dated April 14, 1886, and to be found at pages 112 and 113 of my 'Public Papers' of that year. For the reasons then given I cannot consistently approve this measure.

The peculiar phraseology of the proposed bill savors of an attempt to give to a purely mandatory measure an appearance of being permissive, and thus to conceal the real purpose and effect of the measure. The salaries of the captains are now fixed at $2,750. The proposed bill says that the salaries of the sergeants shall be eighty per cent. of the captains' salaries. It would have been more

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**Ante*, p. 211.

ingenuous, and no more mandatory to have said in undisguised language that the sergeants' salaries should be $2,200, which is precisely what the bill means.

No reason is assigned or can be shown why sergeants should receive just eighty per cent. of the salaries paid to captains, instead of seventy-five per cent. or ninety per cent., and there is no reason except that eighty per cent. happens to bring the salaries to the figure that the draughtsman of the bill wished to fix.

The fact that the local authorities have not yet acted upon the bill of 1887 makes nothing in favor of the present measure. The very object of that bill was to vest the discretion in them. It would be a curious doctrine that permissive bills should be adhered to and insisted upon only so long as the authorities interpreted the permission only as a command.

Neither does it change the situation that the local authorities are somewhat divided upon the subject of the propriety of this bill. The Mayor and several other officials strenuously oppose it, while a strong minority of the local authorities are understood to favor it. But my duty in the premises does not wholly depend upon their attitude, but upon the nature of the bill itself. It is in substantial effect a bill which directs the local authorities what compensation they shall pay their police officials, instead of leaving it to those authorities to determine the question for themselves within certain defined limits.

I have endeavored to adhere to the principle of 'home rule' during the past four years and cannot now consistently depart from it. That course may work hardship in some instances, but in the end it will be found to be the right one. I conceive it to be my official duty to steadfastly sustain the principle of local self-government.

Personally I should be gratified if the police sergeants could receive the increased compensation which they ask, and I am free to say from my investigation of the subject, that I think they are justly entitled to it; but the policy of granting or refusing such increase, like every other matter of local administration, must be determined by the sentiments — sound discretion — and action of the local authorities upon whom the responsibility for municipal government must necessarily rest.''

April 11. To the Assembly: Transmitting the report of a committee appointed by the Academy of Medicine in New York, relative to the condition of the quarantine establishment at that port. For the report and other papers, see Assembly Document, No. 80.

April 14. To the Senate:

Veto of a bill entitled "An act to amend chapter 339 of the Laws of 1887, entitled 'An act to authorize the erection of a soldiers and sailors' monument in the city of Brooklyn by the municipal authorities thereof, and to provide for the payment thereof.'" [19]

'' The bill is defectively drafted. It proposes to substitute the supervisor-at-large and chairman of the memorial committee of the Grand Army of the Republic, in the place of the common council, among the officials authorized to erect the monument. The change is sought to be effected by amendment to section one of the act of 1887. But the bill leaves section two of the said act untouched, whereby the payment of the expense of the monument is still made subject to ' resolution of the common council.' If the bill should become a law, it would, therefore, fail to accomplish its object, and would certainly leave room for conflict between the authorities authorized to construct the monument and the authorities authorized to pay therefor. This defect was discovered upon the argument before me, and after it was too late to have the bill recalled for amendment. I, therefore, withhold my approval of the bill in its present form, without passing on the merits of the proposed changes.''

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[19] The bill was not passed over the veto, but another bill was passed which became chapter 476 on the 2d of June, and which corrected the errors pointed out in the Governor's message.

April 16. To the Assembly:

Veto of a bill entitled "An act to provide for the preservation of the records and history of the Grand Army of the Republic, Department of New York."[20]

''I understand that a resolution requesting the return of this bill to the Legislature, for the purpose of amendment, passed the house in which the bill originated, but by inadvertence failed to reach the other house yesterday in time for passage before the adjournment of the Legislature for the week. In the mean time the last day has arrived upon which I must disapprove the bill, or allow it to become a law. I, therefore, withhold my approval of the bill, in order to give an opportunity to reconsider the measures proposed therein, if so desired, and without prejudice to the consideration of a new bill for like purposes.''

April 17. To the Assembly: Transmitting the annual report of the Sailors' Snug Harbor.

April 19. To the Assembly:

Veto of a bill entitled "An act to amend chapter 707 of the Laws of 1887, entitled 'An act to legalize, ratify and confirm the vote of a majority of the taxpayers of the town of Rose, Wayne county, cast at the annual town meeting of said town, held March eighth, 1887, granting free use of the town hall in said town, to J. E. Sherman Post, number 401, Grand Army of the Republic, for entertainments when not previously engaged; also, granting to said post entire control of the room above the entrance to said hall, to be fitted up with memorial tablets of marble or brass.'"

''The act of 1887 proposed to be amended, legalized the vote of a majority of the taxpayers of the town of Rose, granting to the local post of the Grand Army of the Republic free use of the town hall for entertainments, 'the entire control' of a certain room therein, and authority to fit up the said room with 'memorial tablets of marble or brass,' at the expense of the Grand Army Post.

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[20] The bill was not passed over the veto, but another bill on the same subject was passed and became a law, chapter 207, on the 1st of May.

This bill now proposes to compel the supervisor of the town to fit up said room with the tablets of marble or brass, at the expense of the town, with no limit to the expense, except the supervisor's own discretion, and also compels certain other unlimited expenditures for the benefit of said room, while still leaving 'the entire control' of the room in the local Grand Army Post as before.

However laudable the general purpose may be, as to which I make no criticism, the bill, in its present form, presents three very serious objections.

First. The bill is probably unconstitutional. Section 11 of Article VIII of the Constitution of this State provides that 'no town shall hereafter give any money or property * * * to or in aid of any individual, association or corporation, * * * nor shall any * * * town be allowed to incur any indebtedness except for * * * town purposes.'

The Legislature has already assisted the town to give to this post of the Grand Army of the Republic 'the entire control,' without limit as to time, or otherwise, of this room in the town hall. The further attempt of the Legislature to compel the town at its own expense to fit up this room with 'memorial tablets of marble or brass' would certainly seem like an attempt to compel the town to give money or property in aid of an association or corporation. If so, such legislation would be clearly unconstitutional and void. Without undertaking to assert positively that this bill is unconstitutional, it is safe to say that the question of constitutionality is so close as to expose the town to the probability of expensive litigation to determine the question, if this bill should become a law.

Second. The bill is mandatory, leaving no discretion to the supervisor or the town as to whether or not the expenditure should be incurred. The principle of home rule is as applicable to the town of Rose as to the city of New York. The Legislature has certainly gone far enough in interference with the expenditure of the local taxes of the town of Rose, when it has authorized a majority of the taxpayers to compel a minority to contribute toward a diversion of the town funds to other purposes than the ordinary and regular business of the town. But for the Legislature to compel, as this bill would compel, a majority, perhaps, of the taxpayers without asking their consent to contribute to such purposes, is in violation of the fundamental principles of local self-government. If the majority can under the Constitution be given the power to determine upon this expenditure, they already have such power, and the Legislature ought not to compel them to act against their consent, even if the constitutionality of such action were beyond question.

Third. In any case, the maximum limit of the expenditures should be fixed by the bill. The possibility of expense for the purpose proposed is unlimited. Thousands of dollars might be expended upon memorial tablets of marble or brass. No single officer should be given such unlimited power to burden a town with debt or taxation. There may be no danger of an abuse of discretion in this particular case, but the precedent would be a bad one, and the general principle is wrong."

The bill was not passed over the veto.

April 19. To the Assembly:

Veto of a bill entitled "An act making an appropriation for finishing, heating, ventilating, lighting and plumbing the main building for the Northern New York Institution for Deaf Mutes, and erecting the necessary out-buildings pertaining to the same."

"Last year with some reluctance, and only at the earnest solicitation of the introducer, I allowed a bill giving forty thousand dollars to this same institution to become a law. This amount was declared to be for the purpose of purchasing a site and erecting suitable buildings thereon, and it was understood, if not positively represented, that the work was to be completed for the amount named, which was then considered a generous appropriation. It was also urged in behalf of the bill that the work was a charitable necessity, and that the special circumstances surrounding the case made proper a departure from the salutary rule theretofore followed, that appropriations should be made only to State institutions. Under these representations, I, at that time, deferred to the judgment of the Legislature and of the promoters of the bill, and did not interpose a veto. Now I am again called to pass upon an appropriation for an additional sum of twenty thousand dollars, to be given to this practically private institution, of which, I am informed, the member introducing the bill is one of the managers.

It has for many years been the custom to make a *per capita* allowance to this, as well as other like institutions, in payment for the care of State pupils or patients. That course has annually had my sanction, and the General Appropriation Bill now before me contains upon such *per capita* basis an item of fifteen thousand dollars for this institution, which will probably be approved.

The bill herewith returned, however, stands upon quite a different foundation. Apart from the general principle of appropriations involved, which more careful reflection has led me to conclude was possibly unwisely departed from in the forty thousand dollar appropriation of 1887, I feel that I was not correctly or fully informed last year by the advocates of the bill as to the amount needed to complete the buildings which seemed desirable for this institution, and, even if the first appropriation was a proper one, it can hardly be assumed that it established the propriety of an annual or even a second contribution from the State Treasury. The forty thousand dollar appropriation of 1887 was opposed, among others, by the able chairman of the Senate Finance Committee, and from the report of the Committee in favor of this supplementary and unexpected additional appropriation of twenty thousand dollars, the same Senator dissented this year. I have also received from other citizens of the State protests against further appropriations to this institution.

These reasons compel me to disapprove this bill."

The bill was not passed over the veto.

April 23. To the Senate:

Veto of a bill entitled "An act to authorize the board of trustees of the village of New Brighton, Richmond county, to expend moneys in aid and support of fire engine, hook and ladder and hose companies in said village, belonging to the North Shore fire department."[21]

"This bill is defectively drafted and is unnecessary special legislation.

Section 6 of the third title of the New Brighton village charter (as added thereto by Chapter 394 of the Laws of 1875) provides for the same subject-matter. This bill follows very closely the language of said section, the only material changes being the substitution of 'fire engine, hook and ladder and hose companies located in the village of New Brighton and belonging to the North Shore fire department,' in place of 'the fire companies in said village,' and increasing the amount to be expended for fire purposes from fifteen hundred dollars to three thousand dollars.

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[21] The bill was not passed over the veto, but the Governor's suggestion was embodied in a new bill, chapter 524, amending the New Brighton charter relative to the fire department.

If additional legislation were necessary to effect such changes, it is very evident that such additional legislation should proceed by amendment to this section of the village charter and not by independent enactment as proposed by this bill.

But additional legislation is not necessary to effect the proposed changes.

The Legislature of 1887 very wisely passed a general act for the very purpose of avoiding the necessity of such frequently recurring special legislation. Chapter 504 of the Laws of 1887, entitled 'An act conferring additional powers upon villages,' provides that 'whenever it shall be desired by any village, whether incorporated under a special act or organized under the general act * * * to raise moneys additional to the amount permitted to be raised by its charter * * * for the purpose of building a bridge, constructing a sewer or carrying out some other proper village object, the trustees of any such village may call a special election' for determining the question as therein fully provided. There can be no question but what this general act applies to the village of New Brighton. By proceeding under this general act the taxpayers of the village of New Brighton may determine for themselves whether the village trustees shall expend additional moneys for fire department purposes. It is respectfully submitted that the taxpayers of New Brighton are, of necessity, better judges of their own needs, in this respect, than the Legislature possibly can be."

April 23. To the Senate:

Veto of a bill entitled "An act to prohibit advertising the business or profession of procuring divorces."

" While the object of the bill is undoubtedly meritorious, the bill, as it now stands, is objectionable both in form and in substance.

First, as to form, the bill should be apt in language, and amend the proper section of the Penal Code. The chief benefit of the Penal Code will be defeated if offenses like the one in question, capable of easy classification within the contents of the Code, are scattered by independent enactments through the various volumes of the Session Laws.

Second, as to substance, it is respectfully submitted that the objects sought by this bill can be sufficiently effected by punishing the person who proposes, in and by the circular or advertisement, to procure the divorces, and who is the chief and original offender, without punishing, also, both the printer and the publisher thereof, who are at least comparatively innocent, and who may be actually ignorant of the contents of a skillfully-worded lawyers' card."

The bill was not passed over the veto.

April 25. To the Assembly: Transmitting the report for 1887, of pardons, reprieves and commutations.

May 7. To the Senate:

Veto of a bill entitled "An act to amend chapter 308 of the Laws of 1887, entitled 'An act to provide police regulations for certain territory in the town of Vienna, in the county of Oneida.'"

" This bill is an exact duplicate of Assembly bill No. 667, which became a law on April 30th last, and is now Chapter 194 of the Laws of 1888."

The bill was not passed over the veto.

May 7. To the Senate:

Veto of a bill entitled "An act to further amend chapter 27 of the Laws of 1875, entitled, as amended by chapter 30 of the Laws of 1881, 'An act to designate the holidays to be observed in the acceptance and payment of bills of exchange, bank checks and promissory notes, and relating to the closing of public offices, and to repeal chapter 461 of the Laws of 1887.'"

"This measure proposes to abolish what is known as the present Saturday half holiday, and to substitute in its place a Saturday half holiday during the four months of June, July, August and September.

The half holiday law thus proposed to be repealed or modified went into effect scarcely a year ago. It met with considerable opposition from the start, and it must be conceded that it has not secured that degree of public favor that was anticipated. Nevertheless, it is evident that the law has not had a thorough trial. One year is scarcely a sufficient period in which to test the merits of such an innovation, and it would seem as though a sound public policy would dictate the continuance of the law for at least another year, when if it does not prove reasonably satisfactory, it can readily be modified.

There should not be so much fickleness in our legislation. While laws should, of course, reflect public sentiment, they should not be disturbed with every passing change of public opinion. Every law, when once enacted, should have a thorough and impartial trial, and should not be hastily or inconsiderately repealed. This course will prevent the original enactment of unwise and doubtful measures, as well as secure more steadiness and consistency in our legislation. It is the experience of every thoughtful observer that there are too many laws passed one year only to be repealed the next, and this evidence of vacillation and inconstancy should be avoided.

It should not be expected that such an innovation as that of the Saturday half holiday law would be entirely satisfactory to all portions of the people, especially at the very threshold of its inauguration. But the interests of no one class are to be solely consulted, but the advantages to the community as a whole and to the masses of the people are rather to be considered. There are, undoubtedly, inconveniences to many persons occasioned by its enforcement, but its observance, with a few exceptions, is not compulsory. It affects banks only as regards the payment, presentment or protest of commercial paper on that day, and public offices are permitted to be legally closed, but, aside from these exceptions, all other business may be transacted, if the people desire to transact it. There is otherwise no compulsion anywhere. The law may be regarded as simply declaratory of the public desire that the people should observe the day, but it provides no penalties for its violation. The people need not observe the Saturday half holiday any more than Washington's Birthday, the Fourth of July or Decoration Day, unless they prefer to do so. It is a matter to be largely regulated by public sentiment, and the advocates of the movement may well insist that it is fairly entitled to a longer trial to demonstrate its growing benefits.

It must be admitted that innovations of this character have always met with violent opposition, but it is evident that the tendencies of the age favor more opportunities for recreation, and it is wise to recognize the fact.

There is no actual necessity for the constant and excessive labor that characterized former days. Labor-saving machinery and improvements in every sphere of life have lightened many of the burdens of humanity. Fourteen hours a day formerly constituted a legal day's work; then a day's work was reduced to twelve hours, and then to ten hours, and even the demand for less hours of labor is now receiving respectful consideration. Public schools were formerly required to be kept the whole of every Saturday, afterward only a half day on each Saturday, and now they are wholly discontinued on that day.

Recreation is desirable as well as rest and religious worship. If Sunday is the only day upon which recreation is possible to a large portion of our population, it will of necessity be used by them for that purpose. Our American Sunday will be better observed by setting apart the whole or a portion of Saturday for the recreation and amusement which is now being crowded into Sunday.

But it is unnecessary to reiterate the well-known arguments which are urged in favor of the continuance of the Saturday half holiday all the year round. Many of them are not without considerable force. The propriety of such holiday during the summer months is beyond question. The brief experience of the past year has settled that point. As to its advantages or desirability during the remainder of the year there is more doubt, but another year's experience under the present law will be a better test of its merits, and I think it is fairly entitled to the benefit of such further trial. Having originally recommended the half holiday law, and the Legislature in its wisdom having seen fit one year ago to enact it, I do not think that I would be justified in reversing my previous action after so brief a trial as the law has now had.

For these reasons I cannot consistently approve this measure."

The bill was not passed over the veto.

May 8. To the Senate:

Veto of a bill entitled "An act to provide that the superintendent of the poor of the county of Clinton be the keeper of the poor-house of said county."

"This is special legislation, applicable only to the counties of Clinton and Washington. There would seem to be no good reason why the Superintendent of the Poor should have any different residence in those counties than in the other counties of the State. This bill is liable to be followed another year by special bills applicable to other counties. There is no objection to a general bill amending the law in reference to Superintendents of the Poor which should provide that the Board of Supervisors in any county may require any Superintendent to reside in the poor-house of such county during his term of office. Such a bill would not be open to the objection here specified.''

The bill was not passed over the veto.

May 8. To the Senate:

Veto of a bill entitled "An act to exempt the property, real and personal, of the S. R. Smith Infirmary, from taxation.'"

'' This is special legislation, and therefore objectionable. Undoubtedly the S. R. Smith Infirmary is a worthy charitable institution, and if special bills are to be passed exempting such kind of property from taxation, this institution should be included. But I have heretofore objected to this class of legislation upon the ground that the general statute in reference to taxation should be amended covering cases of this character. The only exception I have made to this rule is where original corporations have been created and a clause has been permitted to remain therein exempting its property from taxation. This bill does not incorporate any institution, nor is it an amendment of any charter, but is a special bill relating only to the subject of exemption. I refer the Senate particularly to my veto last year of Senate bill No. 59, to exempt from taxation the realty of the Young Women's Association of Troy.''*

The bill was not passed over the veto.

**Ante*, p. 332.

May 8. To the Assembly:

Veto of a bill entitled "An Act to enable the president, directors and company of the Susquehanna turnpike road to abandon a part of said road."

"This bill proposes unnecessary special legislation. Chapter 87 of the Laws of 1854, which is a general act, already provides a method by which all turnpike road companies may abandon portions of their road. If for any reason such general law is defective, or otherwise fails to enable this particular road to accomplish its proper purposes, the general law should be amended so as to provide also for possible future cases of like nature."

The bill was not passed over the veto.

May 8. To the Assembly:

Veto of a bill entitled "An act in relation to the state law library located at Delhi, New York."

"This bill provides for the purchase by the State of the law library of the late Honorable William Murray, Justice of the Supreme Court, for the use of the Law Library at Delhi, New York, and appropriates one thousand dollars for such purpose. I am not satisfied that there is any necessity for this purchase being made. The provisions of the bill in reference to the details of the proposed purchase are of doubtful propriety, and I am convinced that the bill ought not to become a law."

The bill was not passed over the veto.

May 9. To the Assembly:

Veto of a bill entitled "An act to provide for removing obstructions from the channel of the ditch belonging to the State. in Murray, Orleans county, State of New York, and making an appropriation therefor."

"This bill is objectionable upon two grounds:

First. The bill is defectively drafted. While it authorizes the Superintendent of Public Works to expend two hundred dollars, or so much thereof as may be necessary, to perform the proposed work, the bill makes no appropriation of the money to be expended.

Second. One general appropriation should be made to cover all items of this nature of an amount to be expended by the Superintendent of Public Works when and where such expenditure is most necessary. This would be in accordance with the recommendation contained in the annual report of the Superintendent of Public Works to the present Legislature, in which, referring to the claims against the State by reason of the absence of such an appropriation, he says:

'The present appropriations are used for the management and maintenance of the canals. There being no provision made for extraordinary repairs, I would, therefore, recommend that an appropriation be made, in the interest of economy, to provide ditches to take away the leakage from the canals, to protect, as far as possible, the adjoining property-owners, and at the same time prevent a constant drain on the State Treasury.'

The bill was not passed over the veto.

May 9. To the Assembly:

Veto of a bill entitled "An act further regulating the sale of intoxicating liquors." [22]

"Last year the Legislature presented for my approval a measure called a 'high license' bill. It not only contained unconstitutional provisions, but it was not uniform in its operation throughout the State, its innovations being mainly restricted to the great cities of New York and Brooklyn. It provided for a license fee for liquors which should be not less than $1,000, and for ale and beer not less than $100, leaving the maximum sum which might be charged in either case wholly unlimited. That measure, so clearly unequal and unfair in its provisions, failed to become a law, and it is believed that such failure met with general approval. In fact, it seems now to be universally conceded that the Executive had no other proper course open for him except to refuse his sanction to so objectionable a measure; and it may be stated that upon the public hearing upon the present bill nearly all those who appeared in its advocacy admitted the propriety of the adverse action taken on the former bill.

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[22] See note 17, and also 1887, note 32, *ante*, p. 436.

A new measure is now presented for approval which radically differs from the proposed law of last year, but which in many respects is equally as unjust, defective and objectionable.

In the first place, the bill does not amend the general Excise Law of the State, but is an entirely distinct and independent act, having no connection with or proper relation to other statutes upon the same subject. This is clearly objectionable, and there is no excuse for such defective legislation.

The attention of the Legislature has been repeatedly called to the necessity of properly amending existing general laws, instead of enacting separate or independent acts, and by a multiplicity thereof creating confusion in their application and serious doubt as to their proper construction.

On March 16th, last, in a special communication addressed by me to the Legislature, there was pointed out the disconnected, piecemeal, fragmentary, intricate and incongruous legislation which has been heretofore had upon the subject of excise, and the absolute necessity of an entire revision of existing statutes and the desirability of ceasing from the enactment of any more supplemental or independent legislation relating to this subject.

It may be safely asserted that an Excise Law should be clear and explicit and easily comprehended. Its interpretation should be free from difficulty, and, above all, it should be complete in itself. The proposed bill violates this essential principle of legislation, and, irrespective of any other question, it is defective in form, and therefore objectionable.

The measure is also crude, ill considered and unadvisable. The amounts fixed as the minimum sums which may be exacted for licenses are unreasonable and likely to be productive of great inconvenience or hardship. In certain portions of the State, especially in the rural districts and in the smaller villages and towns, the imposition of a liquor license fee of not less than $300 and of an ale and beer license fee of not less than $100 would amount practically to a prohibition of any licenses whatever. So long as the general policy of the State prevails in opposition to prohibition and in favor of licenses, the amounts fixed by statute which are authorized to be imposed should be reasonable, and not excessive. There should not be undue laxity on the one hand, nor needless severity on the other. Under the pretense of regulating the liquor traffic there should not be an attempt to secure practical prohibition. The Legislature should not seek to accomplish indirectly what it has not the constitutional right or power to do directly.

The measure is likewise unfair in its discriminations. It imposes an unjust burden upon the ale and beer business, and renders it possible that a greater sum may be demanded for such a license than for a liquor license. It provides that from $300 to $1,000 may be required for a liquor license, while for an ale and beer license alone the sum of $400 may be insisted upon as the maximum sum. It is submitted that such a peculiar and unusual provision is not demanded by public sentiment, and ought not to be approved.

In no other State in the Union where the experiment of high license has been entered upon does the amount which may be demanded for an ale or beer license exceed that of a liquor license. It is difficult to discover any adequate reason for this discrimination against the harmless beverages and in favor of spirituous liquors proposed in this bill, and this is unaccountable except from the fact that the bill was first adopted in a partisan caucus as a party measure, and afterward arbitrarily changed without due consideration or reflection, simply to secure enough votes for its final passage, regardless of its real merits.

The amount required for a storekeeper's license is unnecessarily burdensome and excessive. 'Storekeepers' are those who do not sell any beverages to be drank upon their premises, but sell them in small packages and cases as merchandise, and are usually the most respectable of any class of people engaged in the trade, yet by the terms of this bill their licenses are arbitrarily fixed at from $200 to $500, amounts which it must be conceded would be regarded as exorbitant and operate oppressively in many instances. There was no demand for this discrimination against this class, largely made up of retail grocers, and it was unwise on the part of the friends of the bill to insist upon such extreme terms. The Retail Grocers' Union of New York City, a very large, worthy and respectable organization, have filed with me a protest against the bill, in which the injurious effects upon their business interests are fully set forth.

It is apparent that the bill is unwise in its discriminations and injudicious in its details, and would require amendment at the very next session of the Legislature.

The important fact must not be overlooked that by its express terms the essential provisions of the bill do not go into effect until October 1st, next. The last section of the bill (Section 12) so declares. Therefore, its enactment now would not affect any licenses for this year, nearly all of which have already been granted under the existing law. Present licenses now in force as a rule do not expire until May 1st, 1889.

The bill is so unsatisfactory to all interests affected that if permitted to become a law it would provoke another contest next year over its amendment. A few months' delay can work no material harm, and in the meantime a revised Excise Law can be perfected and presented early to the next Legislature.

The Excise Laws of our State should not be constantly changed. No law upon the subject should be passed unless it is reasonably certain that it will be sustained by public sentiment, and will not require modification at the first opportunity.

The measure, after strenuous efforts to secure its adoption, only received in either house the bare constitutional majority necessary for its passage, and, if it is really greatly desired by the people of the State, the fact has not been made manifest.

Its approval is not urged upon moral grounds. The policy of licensing the sale of liquors is approved by both of the prominent political parties, and hence no such question can legitimately arise. There is simply a difference of opinion as to what amount should with propriety be demanded in the proper regulation and restriction of the traffic.

Neither is the bill advocated as a revenue measure. If its object was solely to increase the revenue of the localities interested, it might have gone further, and compelled licenses from distilleries and breweries and social clubs, but there is no such avowed object on the part of its friends.

The only question legitimately or directly involved in the consideration of the bill is that of public policy. That question should be approached in no narrow spirit, and should be determined with a due and proper regard for all interests affected. That the liquor traffic should be regulated and restricted is conceded by all except those who believe in entire prohibition. It is believed by those who oppose this measure that this regulation can best be accomplished through an Excise Law fair and reasonable in its provisions, but rigorously enforced. The fact should be recognized that our population in many localities is cosmopolitan in its character, and that the habits and tastes of the people greatly differ. No law should be passed which cannot well be enforced, or is so unpopular that it will inevitably be successfully evaded. High license, of itself, will not necessarily prevent the evils of intemperance. It may not produce a much greater revenue, even if that is so very desirable. It may create a monopoly in the liquor business by concentrating it in the hands of a few dealers, and thereby crush out those of ordinary means, but the benign results anticipated from it in the promotion of the cause of temperance will not be realized.

It is unfortunate that the bill was made a partisan measure before any opportunity was afforded for its discussion in either house. With scarcely an exception, every amendment intended to render the bill more moderate and consistent was unceremoniously voted down.

I realize that there is great clamor from certain quarters in behalf of this measure, and that much industry and energy have been displayed in manufacturing public opinion in its favor. If half as much activity had been exerted in enforcing the provisions of the present Excise Law and in inducing Boards of Excise in various parts of the State to avail themselves of the opportunity to increase their license fees under such law, something practical would almost undoubtedly have been accomplished. This opportunity is still open. Under the existing Excise Law Boards of Excise have the legal right to require a license fee in all cities of $250, and in all villages and towns of $150, and if public sentiment in any locality in the State demands a higher license than the local board is now accustomed to charge, such sentiment ought to be able to secure that increase under the law as it stands. With the exception of a few localities in the State, the maximum license fees now allowed by law are not exacted, and hence, even from the point of view of the 'high license' advocates, the pressing necessity of this bill is not apparent. The Legislature should only fix reasonable limits, leaving each locality the privilege of determining within such limits whether the license should be more or less. If local public sentiment will not sustain the increase permitted under the present law, it is questionable whether the Legislature should arbitrarily interfere to increase the fees, which are and should be mainly a matter of local concern.

I appreciate the growing sentiment in favor of requiring higher license fees, and of throwing around the liquor traffic more restraints, and am desirous of respecting such sentiment, as well as in every proper way co-operating with it, but I cannot consistently give my assent to an unreasonable and extreme measure, which bears intrinsic evidence of its lack of careful preparation and of its want of judicious consideration."

May 9. To the Assembly:

Veto of the following items in the Supply bill, Chapter 270:

"'For the comptroller, for payment of judgments against the people for costs in certain actions, pursuant to section three thousand two hundred and fifty-one of the Code of Civil Procedure, two thousand five hundred dollars.'[23]

This item is objected to and not approved for the reason that the reference to the Code of Civil Procedure is wrong. The section which is evidently intended to be referred to and which relates to costs against the State and their payment, is numbered three thousand two hundred and forty-one. This error was some days ago pointed out to the chairmen of the proper committees of both houses and an opportunity given for the recall of the bill for correction, which opportunity was not accepted.

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[23] The error in this item was corrected in a supplementary bill, which became chapter 382, on the 25th of May, 1888.

'For the Comptroller, for the payment of expenses incurred under joint resolution of the Legislature, adopted January twenty-seventh, eighteen hundred and eighty-eight, authorizing the State Engineer and Surveyor and others, to examine and report upon the condition of the ceiling of the Assembly Chamber, five thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

No such expenditure of State funds can legally be authorized by concurrent resolution. Under the Constitution a proper bill should have been passed by the Legislature and an appropriation made to carry it into effect.[1] This not having been done before the examination referred to in the item was entered upon, it is now necessary for the Legislature to pass a bill legalizing the concurrent resolution mentioned. This is a course the Legislature has frequently followed in the case of other expenditures made, under the deficient authority of concurrent resolution.

The appropriation is also not correct in form, being made 'For the Comptroller, for the payment of expenses incurred,' etc., etc. The Comptroller has incurred no expense in the matter mentioned. A committee consisting of the State Engineer and Surveyor, and others named by the Assembly has, I suppose, incurred some expense in its investigation of the Assembly Chamber ceiling, and it should, in the proper way, be enabled to pay such debts, and, where the members of such committee are not already in the employ of the State, they should be compensated for their services.

'For the Comptroller for payment of bills to be audited by him for expenses incurred by the committee of the Senate of eighteen hundred and eighty-six, on privileges and elections, for services of stenographer to the committee, pursuant to resolution of the Senate, adopted March tenth, eighteen hundred and eighty-six, the sum of seventy-two dollars, or so much thereof as may be necessary.'

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[1] Const. 1846, art. 7, § 8.

This item is objected to and not approved.

The real object of this appropriation is not apparent unless it is intended to audit a claim or grant a gratuity for some unnamed person.

The bills of the stenographer, and for all stenographic work of this committee, have been audited and paid by the Comptroller, as appears by the receipted bills therefor on file in the Comptroller's office. Any other or further claim would be unfounded in fact or law. I am informed by the Comptroller that if any lawful or just claim exists for services of the stenographer of this committee there is an available appropriation in the hands of the Comptroller out of which such claim can be paid.

' For the Comptroller, for payment of bills to be audited by him for expenses incurred by the committee of the Senate of eighteen hundred and eighty-seven, on taxation and retrenchment, for fees of counsel in the investigation in relation to taxation, pursuant to resolution of the Senate, adopted January twenty-eighth, eighteen hundred and eighty-seven, the sum of five thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

In a memorandum of veto of a similar item in a Senate appropriation bill, filed with the Secretary of State June 24th, 1887, I said:*

' This item is objected to and not approved.

' The employment of counsel and stenographers by legislative committees from time to time, and especially during the recess of the Legislature. is an expensive and unsatisfactory system, and inevitably leads to abuses. Lawyers

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**Ante*, p. 439.

and stenographers are apt to solicit such employment, and thus induce committees to make engagements which their own good sense repudiates. It is possible that such services have been honorably engaged and performed in good faith. In this particular case no intimation to the contrary is intended to be made, and individual injustice may result from non-payment for the services rendered. But the Executive has no way of checking such loose methods and of enforcing the adoption of a more regular and economical system except by refusing Executive approval of appropriations for the payment thereof. The results of the work of this Senate committee and its counsel, as shown in the crude, imperfect and ill-digested legislation of the past winter, do not justify the expenditure of the large sum appropriated by this item.'

'For deficiency in appropriations for expenses of legislative committees, fees of counsel, stenographers, printing of testimony and other contingent expenses of the Legislature of eighteen hundred and eighty-eight, the sum of twenty-five thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

Where the Executive is asked to approve so large a sum as this alleged deficiency, he is entitled to have it appear what legislative committees have incurred such expenditures and the purposes thereof.

It is believed that this appropriation is not wholly intended to meet expenses already incurred, but is designed for committees who have been authorized to conduct investigations and to meet expenses to be hereafter incurred. If this be the case, the committees for whose benefit this appropriation is sought to be made should be specified and the amount intended for their special use should be stated. Some of the investigations ordered by the present Legislature are believed to be proper and praiseworthy, while others may well be claimed to be apparently conceived and intended for the accomplishment of partisan purposes. It is understood that in one such investigation already ordered partisan counsel have been employed by the committee, hearsay testimony has been freely admitted before them, counsel for persons accused have been refused opportunity for the cross-examination of witnesses, and in many other respects the investigation has been arbitrarily and unreasonably conducted. Such proceedings are neither entitled to respect nor should the expenses of such an unfair and *ex parte* inquiry be paid for from public funds.

If such committees are to be used in such manner for the basest of partisan purposes, their expenses should be paid from the campaign funds of the party in whose interest they are sought to be manipulated and not from the public treasury.

'For deficiency in appropriations for expenses of legislative committees, fees of counsel, stenographers, printing of testimony and other contingent expenses of the Legislature of eighteen hundred and eighty-seven, the sum of five thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the reason that it is indefinite as to the expenses intended to be covered thereby.

The Governor, who is asked to approve an appropriation, is entitled to know for what purposes such appropriation is proposed to be expended, and to know the cause of the alleged deficiency, and is entitled to know by what committees and for what purposes any indebtedness had been contracted. The Comptroller, who must audit the bills which are to be presented under said appropriation, should also be definitely informed as to the bills which the Legislature expected would be paid out of the moneys appropriated.

'For deficiency in appropriations for expenses of legislative committees, fees of counsel, stenographers, printing of testimony and other contingent expenses of the Legislature prior to eighteen hundred and eighty-seven, and for like expenses for stenographic services rendered in the matter of charges preferred against the Commissioners of Excise of the city of New York in the year eighteen hundred and eighty-five, the sum of two thousand two hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the general reasons stated in objection to the preceding item.

It is also objectionable for the additional special reason that within it is incorporated a provision for the payment of stenographic services not in any way pertaining to legislative committees, but of an entirely different character.

It is to be noticed too that it is applicable to the expenses of any Legislature 'prior to eighteen hundred and eighty-seven,' which makes its scope as to time rather far reaching and would perhaps precipitate upon the State treasury some exceedingly antiquated claims.

'For printing maps, plates, binding and publishing six thousand eight hundred copies of the report of the State Land Survey for the year eighteen hundred and eighty-seven, ordered by joint resolution of the Senate and Assembly to be distributed in accordance with the terms and directions contained in said resolutions, ten thousand dollars; for printing, engraving maps and other necessary expenses of preparing and publication of three thousand volumes of the records of the Adirondack and State Land surveys, ordered by joint resolution of the Senate and Assembly, May twenty-fourth, eighteen hundred and eighty-seven, the sum of six thousand dollars, or so much thereof as may be necessary. Said work to be done in accordance with, and at a cost not in excess of the terms of the contract for legislative printing.'

This item is objected to and not approved.

In the veto of an item of general similarity in character in an Assembly appropriation bill, transmitted to the Assembly May 25th, 1887, I said:*

'This item is objected to and not approved.

There is no such department known in the laws of the State as the State Land Survey, and there is no such official as Superintendent of said Land Survey. If, by this item, it is intended to appropriate money to be expended by the so-called Superintendent of the Adirondack Survey, it is not deemed a wise expenditure. Up to 1885 there had been appropriated for Adirondack surveys a total of $135,540.99. In the report to the Legislature in 1885, the State Engineer says that no record of importance is filed in his office as the result of this survey, except the protests of his predecessors against its independent existence. The records, if any exist, of the Adirondack and other surveys should be preserved, but, as was said in the veto of a similar item in 1885, the State Engineer is the proper person to conduct such work, and the appropriation should be given to him, a perfectly competent, responsible and willing official.

Until some well devised general scheme is adopted, I am opposed to the further expenditure of money by the State for land surveys, and I certainly cannot approve such piecemeal legislation as this item illustrates.'

The opinions I then expressed are generally applicable in objection to the appropriations of sixteen thousand dollars this year proposed for printing the reports of this same survey.

'For the supervisor of the town of Lyonsdale, Lewis county, to reimburse said town for building a bridge over Moose river on the highway which leads from the village of

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**Ante*, p. 423.

Port Leyden to State lands in the Adirondack park and other State lands in that vicinity, twenty-five hundred dollars.'

This item is objected to and not approved.

So far as I can learn, no adequate reason exists why the State should reimburse this town for building the bridge mentioned. Whatever the propriety of this expenditure, it seems to me it should at least be made dependent upon the approval of some State officer who is conversant with the construction of work of this kind."

The items were not passed over the veto.

May 9. To the Assembly:

Veto of the following item in the Appropriation act, Chapter 269:

"For the trustees of the State Museum of Natural History, for the publication of the Palæontology of the State, pursuant to section three of chapter three hundred and fifty-five of the Laws of eighteen hundred and eighty-three, fifteen thousand dollars, or so much thereof as may be necessary.

This item is objected to and not approved.

Chapter 355 of the Laws of 1883, in section 3, provides:

'The trustees of the state museum of natural history are hereby appointed to supervise the completion of the publication of the palæontology of the state, to contract for the preparation and printing thereof, and to audit and certify to the expenditures therefor; and it is hereby provided that one volume of said palæontology shall be published within one year from the execution of the contract for its preparation, that a second volume shall be published within two years, and that the entire work shall not extend beyond five bound volumes in addition to those already issued, all of which shall be published within five years from the passage of this act, * * * and the sum of fifteen thousand dollars shall be appropriated annually for five years for the purposes of this section, payable on vouchers certified by said trustees.'

For the five years, 1883, 1884, 1885, 1886 and 1887, such appropriation of fifteen thousand dollars has been made, and now in the sixth year another like appropriation is asked for.

The State had before the law of 1883 expended over twelve hundred thousand dollars for a geological survey of the State, which sum includes all expenses connected with the preparation and publication of a natural history and the expense of the State Cabinet of Natural History and Agricultural Museum, and no results adequate to such an expenditure of the public funds had been realized. I am informed that the law of 1883 was intended to set a limit to one branch of this drain upon the public treasury, and that the approval of that act was sought and obtained upon the assurance offered by the promoters of the publication of the palæontology that the additional expenditure of seventy-five thousand dollars therein pledged was all that would ever be asked for. Now not only is fifteen thousand dollars more desired, but the Supply Bill contains an item of seventeen thousand, four hundred and forty-eight dollars and eighty-six cents, denominated a reappropriation, for this same purpose, which item I have to-day approved, it apparently being an unexpended portion of the seventy-five thousand dollars pledged by the act of 1883.

I can hardly believe that those most directly interested in this publication would seek an appropriation contrary to the understanding had during the term of my predecessor in office, and I do not base my disapproval on that ground. I am, however, convinced that further expenditure in this direction is an improvident use of the people's money, and I am inclined to believe that the results for the future would be no less unsatisfactory than those of the past."

The item was not passed over the veto.

May 11. To the Senate:

Veto of a bill entitled "An act to amend chapter 358 of the Laws of 1863, entitled 'An act establishing a quarantine and defining the qualifications, duties and powers of the health of the health officer for the harbor and port of New York.'"

"If there were no other reasons, my own self-respect would prevent my approval of this bill under the circumstances surrounding its presentation and passage.

For twenty-five years the power of the appointment of Quarantine Commissioners has been vested in the Governor, subject to the advice and consent of the Senate. There has been no complaint of any abuse of such power. Public sentiment has not demanded any change.

This bill, however, proposes to take away this power of appointment from the Governor in whom it has been vested for so many years, and provides for the election of commissioners by joint ballot of the Legislature.

Such a proposition is absurd, ridiculous and unwise, and no good reason can be urged for its adoption. Its passage was procured under the pretense that it was a political necessity, and against the best judgment of many representatives who reluctantly supported it as a party measure, but protested against the policy of its enactment.

There is no excuse for such vicious legislation. It would never have been contemplated had the Executive been of the same political faith as the majority of the Legislature, and its suggestion at the present time is a mere matter of supposed political expediency, and is utterly without merit. There is no sense or propriety in selecting these minor officials by a joint ballot of the Legislature. It is unnecessarily dignifying such places and magnifying the importance of such offices. It places such positions on a par with United States Senators, Regents of the University, and the State Superintendent of Public Instruction, and is entirely without precedent.

The failure of the Senate to confirm Quarantine nominations heretofore made by me is put forward as the excuse for this measure. There never was any justification for the refusal of the Senate to confirm any of the excellent Quarantine nominations which have been made from time to time during the past three years. The nominees have all been honest, capable and worthy men, who would have reflected credit and honor upon the position and relieved the public service from the scandals which have attached to the present management. Political or factional considerations have prevented the consideration of such nominations upon their merits, although the nominees have mainly been of the same political faith as the majority of the Senate.

There has been an obstinate refusal to confirm any one in the place of the Commissioners whose terms of office had long since expired, and such refusal was a virtual usurpation of the power of appointment which properly belonged to the Executive. There are now two vacancies existing in the Board of Quarantine Commissioners and the public interests require that they should be filled, but nominations even for these actual vacancies are left unacted upon, regardless of right, duty, precedent, and all constitutional obligations, and in lieu thereof this bill, with its impudent and audacious proposition to take away from the Governor the power of appointment, is coolly presented for his approval, and under such circumstances it cannot be regarded as anything else than a studied and intentional insult to him, for the faithful performance on his part of his sworn constitutional duty.

It may be safely assumed that the Legislature never expected that so peculiar and partisan a bill as this would be approved.

There are also two other grounds which render the measure objectionable.

First. The title is fatally defective. By an amusing blunder the title is made as ridiculous as the bill itself. It relates among other things to 'the health of the health officer of the port of New York.' I was not aware that the health of the Health Officer of the port of New York had been seriously impaired, although it may be so, owing to his long continuance and arduous labors in the public service; but whether it be so or not, his health hardly presents a matter for legislative interference.

Second. The bill provides that the election of Quarantine Commissioners by joint ballot of the Legislature shall be on the second Wednesday of May, 1888. That time seems to be already passed, and the bill, therefore, comes too late, and would be unavailable even if signed."

The bill was not passed over the veto.

May 11. The Legislature adjourned without day.

MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

March 22.

Memorandum filed with Senate bill, Chap. 77, amending the Quarantine Act. Approved.

"It is doubtful whether this bill as originally introduced was of any particular benefit or real value, or would have accomplished any substantial good. Its provisions were deceptive. It made no material reduction in the enormous fees of the health officer, that is, in the legal fees which he was theretofore entitled by law to charge. While it purported to fix a salary for the health officer, it was so peculiarly worded that it really gave that officer all the fees which he should receive, after the payment of certain specified sums to employés. It did not, in fact, fix, limit or restrict his compensation.

But, upon motion of Senator Linson, the bill was amended in the senate by providing, in substance, that the health officer's salary or compensation should be restricted to the sum of $10,000, and that all fees received over and above such sum, and over and above the compensation required to be paid to certain specified employés, should be accounted for and paid over to the quarantine commissioners, to be expended by them in ' the preservation and repair of the structures belonging to the quarantine establishment.'

This amendment changed the whole character of the bill and perfected it, so that in its present shape it seems to be reasonably free from criticism.

There is one objectionable clause in the bill, wherein it is provided that the secretary of the commissioners shall not be appointed by the commissioners themselves, but by the president of the board. This was evidently inserted in view of the provisions of another bill now pending in the legislature, wherein it is sought to legislate into the office of president of the board a notorious member of the present board whose term as quarantine commissioner has long since expired. But as such latter bill is not very likely to become a law, it does not seem proper under such circumstances that the one objectionable clause should be permitted to defeat the whole bill, although possibly that may have been one of the purposes of its retention.

A reform in quarantine matters has long been urged and demanded, but has been steadily resisted in the legislature during the past three years, but the present bill, as now amended, affords reasonable assurance that with a change of officials, which it is believed cannot be much longer postponed, the quarantine department will hereafter be better administered.

There does not seem to be any serious constitutional question in reference to any provision of the bill, at least none worthy of any special notice, and the bill is, therefore, hereby approved."

April 24.

Memorandum filed with Senate bill, Chap. 161, relating to Lee and Nostrand avenues, Brooklyn, which became a law without the Governor's approval.

"This bill appears to belong to that class of special legislation which has, as a general rule, received my disapproval. Particular streets ought not to be exempted from a general law by separate acts, but only by exceptions embodied in the general law itself.

It is conceded by all parties interested that the streets in question ought not to be subject to the danger of being used for railway purposes. Their situation presents certain other features so exceptional in their character as to justify, in this instance, a departure from my general rule so far as to allow this bill to become a law without my signature. But my action in this case is strictly exceptional, and is not to be taken as a precedent for future cases of an apparently similar nature."

May 9.

Memorandum filed with items in the Supply bill, Chap. 270, appropriating moneys to be expended by the Superintendent of Public Works. Items approved.

"The following items of appropriation for the Superintendent of Public Works, contained in the bill herewith, are severally approved upon the understanding that the work therein contemplated is not to be performed, unless, in the judgment of the said Superintendent, the interests of the State will be best subserved in each case by a performance of such work. From the language of these items, I believe that the expenditures are discretionary with the

Superintendent of Public Works, and, so believing, I have not made objection thereto:

'For the Superintendent of Public Works, for dredging, removing sandbars and otherwise improving and putting in a safe and proper condition for the passage of boats and steamers plying thereon, the navigable portion of Salmon river, between the village of Fort Covington, Franklin county, and the Dominion boundary line, ten thousand dollars.'

'For the Superintendent of Public Works, for repairing the roads and bridges and removing obstructions in Onondaga creek, near the stone bridge, on the Onondaga Indian reservation, three thousand dollars, fifteen hundred dollars of which shall be expended on the new William Hill cross-road, as laid out in eighteen hundred and seventy-four, and five hundred dollars on the highway known as the west side road.'

'For the Superintendent of Public Works, for building a bridge over the Allegany river on the Cattaraugus Indian reservation at Onoville, three thousand five hundred dollars.'

'For the Superintendent of Public Works, for the repair of public highways and two bridges over Cattaraugus creek on the Indian reservation in Cattaraugus county, three thousand dollars.'

'For the Superintendent of Public Works, for removing obstructions and otherwise improving the navigation of the south branch of Grass river, two thousand dollars; for the middle branch of Grass river, twenty-five hundred dollars, and for the main branch below Buck's bridge, fifteen hundred dollars.'

'For the Superintendent of Public Works, for necessary repairs of the State road from the east line of the town of Forestport, Oneida county, to Woodhull, in Herkimer county, five hundred dollars, or so much thereof as may be necessary.'

'For the Superintendent of Public Works, for the purpose of removing obstructions and otherwise improving Racket river and its tributaries, near its junction with Trout brook, and facilitating the passage therein of logs and timber, one thousand dollars.'"

THIRTY-DAY BILLS.

May 22.

Memorandum filed with Assembly bill, Chap. 344,—Half pay of disabled firemen in Buffalo. Approved.

"The changes proposed by this bill guarantee to the firemen of the city Buffalo certain rights and privileges; among others, half pay during disability by reason of sickness or accident, incurred in the performance of duty for limited periods and under proper safeguards. Without such guaranty, the Board of Fire Commissioners might well doubt their right to grant the same.

The administration of the fire department and the control of the firemen while on duty should be left with the local board of fire commissioners, where this bill very properly leaves it. The guaranty of the special rights and privileges conferred by this bill do not interfere with such administration and control, and are, therefore, not in conflict with the salutary principles of local self-government."

May 28.

Memorandum filed with Senate bill, Chap. 416, providing for certain improvements in the canals. Approved.

"Action has been delayed upon this bill until the present time in order to afford ample opportunity for any opposition that may really exist thereto to properly manifest itself. Such opposition, however, has not been made apparent. There has been no application for any hearing against the bill. No remonstrances have been received against it. Public sentiment seems to favor it as a meritorious measure, and it appears to be generally assumed that it should become a law.

Under these circumstances there would seem to exist no good grounds upon which favorable action should longer be delayed, and the bill is accordingly hereby approved.''

June 6.

Memorandum filed with Senate bill, Chap. 521, authorizing the construction of a sewer in Lockport. Approved.

'' This bill when first introduced was mandatory in its character, but during its progress in the Legislature was amended so that it is now permissive.

It ' authorizes and empowers ' the city of Lockport to construct a certain kind of sewer therein, and such language must be construed to leave the construction of said sewer wholly discretionary with the common council.

I am satisfied that the council cannot be compelled by mandamus to act unless a majority desire to do so. The bill does not, therefore, violate the principle of ' Home Rule,' but simply allows the local authorities to enter upon an alleged much-needed improvement in case, in their judgment, they deem it advisable.

In this view there can be no reasonable objection to the measure. A special bill seems to be proper under the peculiar circumstances presented, as it authorizes a sewer not specifically provided for under the general provisions of the charter.'

June 7.

Veto filed with Assembly bill entitled "An act to incorporate the city of Corning." [27]

''After most deliberate and careful consideration of this bill, I regret that I am unable to approve it. It is seriously defective. Originally it provided for the election of three supervisors, but objection being made thereto from other parts of the county, it was agreed among the friends and opponents of the bill that it be amended so as to provide for only one supervisor from the city. Accordingly, section one of title two of the bill was so amended, but, through inadvertence or mistake, section four of the same title, which related to the same subject, was not amended, but was left in its original condition. Therefore, section four is in direct or substantial conflict with section two. Section four provides as follows:

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[27] Corning received a city charter in 1890, chapter 58. A provision in this act, relative to justices of the peace, was held unconstitutional in Tobias v. Perry (1898), 25 Misc. 74.

'§ 4. Every inhabitant of said city who shall, at the time and place of offering his vote, be qualified to vote for member of assembly, shall be then and there entitled to vote for all officers to be elected by the city at large, and for ward officers to be elected in his ward. Every such inhabitant of either the first or second ward of said city shall also be entitled to vote in the ward in which he resides for a supervisor of said wards, and every such inhabitant of either the third or fourth ward, in said city, shall also be entitled to vote in the ward in which he resides for a supervisor of said wards, and every such inhabitant of the fifth ward in said city shall also be entitled to vote in that ward for a supervisor of said ward.'

This conflict cannot well be reconciled. Legal advice, which I have consulted, differs as to whether section two or section four would be deemed to control.

It is unfortunate that this legislation should have been so hastily prepared as to present these glaring defects, and that it should have reached me so late that it cannot now be amended.

Section 3 of title 4 should also have been amended, but it was only partially done. It provides that ' the *supervisor* of said city * * * shall be *members* of the board of supervisors of Steuben county.' This adds to the confusion and uncertainty created under the previous conflicting sections.

The advocates of the bill in its present form admit that it would be uncertain whether the city would be entitled to more than one representative in the board of supervisors, but undertake to promise in behalf of the city that only one supervisor shall actually be elected, and that the question will not be allowed to arise. Any one elector, however, could defeat this promise. At the election which it is provided shall take place twenty days after the passage of this act, any elector could lawfully insist upon his right to vote for himself or any other qualified citizen for supervisor of his two wards, and thus necessitate the determination of the question. Certainly it is not wise to inaugurate the City of Corning with the practical certainty of immediate litigation.

It is now scarcely more than six months before the next session of the Legislature. This bill can then be carefully perfected, and ready for immediate introduction. The time and labor spent upon it need not be considered wasted, and the advantages of a more perfect charter will, I am sure, more than compensate for this short delay."

June 9.

Memorandum filed with Senate bill, Chap. 535, incorporating the city of Middletown. Approved.

"I last year was compelled to disapprove a bill providing a city charter for Middletown for the reason that it contained several most objectionable features. The bill now before me is free from the defects then pointed out and, upon the whole, seems to provide a good plan for the organization and administration of a municipality. Nevertheless, I have had some hesitation in approving the measure in consequence of the provision relative to the city representation in the county board of supervisors, by which an undue proportion of the membership of that board is claimed to be given to the city of Middletown. Were the Legislature still in session I might be disposed to advise a recall of the bill and to suggest a change in this respect, but such change is not now possible and the bill as a whole must stand or fall. In its present form it has received the support of representatives of Orange county in the Senate and Assembly, who are most interested in its affairs and upon whom the responsibility for this legislation must mainly rest, and I have, therefore, concluded, in consideration of its many meritorious features and the fact that there is an apparent general sentiment in its favor, to give it my signature and thus create the city of Middletown."

June 9.

Memorandum filed with Assembly bill, Chap. 533, increasing the salary of the Deputy Superintendent of Public Instruction. Approved.

"This bill increases the salary of the Deputy Superintendent of Public Instruction, making the amount substantially the same as that paid to the Deputies in other Departments. After consideration of the merits of the bill, I have concluded to give it my approval, notwithstanding the fact that the office affected is held by a member of that political party, which, having control of legislation, declared its intention to pass no bill increasing the salary of any state official. In accordance with that declaration, every increase was refused where the beneficiary was of opposite political faith. I am, however, unwilling to be controlled by considerations of narrow partisanship, whereby such a party caucus determination is ignored when political friends are to be favored, and is invoked when it can be used to defeat legislation which chances to benefit a political opponent."

June 9.

Veto filed with Assembly bill entitled "An act to secure more fully the independence of electors and the secrecy of the ballot."[28]

"Any legislation of which the avowed object is to secure a pure and untrammeled exercise of the right of suffrage, and to give effect to the popular will in elections, is entitled not only to a respectful but to a favorable consideration. At the same time, whatever its motive and object, if such legislation, in its operation and effect, qualifies the electoral franchise as conferred by the Constitution, or substantially embarrasses or impedes its exercise, regard for the Constitution, for the right of the elector, and for the potency of the popular will in determining the administration of government, imperatively requires the Executive to protect these essential interests, even against enactments intended or purporting to conserve them.

By section 1, article 2 of the Constitution, every male citizen of the age of twenty-one years * * * shall be entitled to vote at all elections.

By section 4 it is prescribed that laws shall be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage.

By section 2 the Legislature is authorized to enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

It is noteworthy that the Constitution thus prescribes what laws the Legislature shall or may enact in reference to elections and the exercise of the right of suffrage; and, upon familiar principles, the general power of the Legislature is qualified and restrained by this express and specific designation of authority.

That the Legislature cannot exact any qualification for the exercise of the electoral franchise other than as prescribed by the Constitution, is a self-evident proposition. The only power conferred upon the Legislature by the Constitution, in regulating the exercise of the right of suffrage, is to disfranchise certain convicts and to provide for ascertaining the citizens entitled to vote; *i. e.*, to enact a registration law. The bill before me is not an exertion of the former power; nor is it a registration law. It is an act ostensibly to prevent fraud, intimidation and undue influence in elections; and conceding that such legislation, otherwise than by laws defining and punishing offenses, be within the competency of the Legislature, still a statute for that purpose, which embarrasses, hinders or impedes an elector in the exercise of the right accorded to him by the fundamental law, would be an infringement of his constituted rights.

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[28] A new ballot law was passed in 1890, chapter 262. This subject was afterwards included in the election law of 1896, chapter 909, and amendments.

In the construction of registration acts, passed by due authority, the courts of the various States have uniformly held that, if such acts hinder or impede the exercise of the right of suffrage, as conferred by the Constitution, they are void, for repugnancy to the fundamental law. (Dells v. Kennedy, 49 Wis., 555; State v. Baker, 38 id., 71; Daggett v. Hudson, 43 Ohio St., 548; Page v. Allen, 58 Penn. St., 338; Edmonds v. Barbury, 28 Iowa, 267; Monroe v. Collins, 17 Ohio St., 666; White v. County, 10 Pacific Rep., 484; State v. Conner, 24 Reporter, 723.)

And it must be so in reason; else, under pretext of protecting the purity of elections, the Legislature might assume virtually to deny the elector his constitutional right of suffrage.

Assuming that the Legislature may enact laws regulating elections other than such as the Constitution expressly authorizes and requires, the question is, does this bill restrict, hinder or impede the voter in the exercise of his constitutional right of suffrage?

That an elector may present whomsoever he pleases as a candidate for public office; and that the law shall not discriminate between candidates so as to favor one at the expense of another; that an elector shall be allowed ample opportunity to canvass the merits of candidates; and to that end shall be duly informed who are candidates; that the liberty of selecting between candidates shall be reserved to the voter down to the moment when he deposits his ballot; these are rights which, by implication at least, the fundamental law guarantees to the elector, and which are essential to the due operation of the electoral principle in our theory of representative government. But in the exercise of these rights the elector is plainly hindered and impeded by the bill under review.

The exclusive privilege of providing electors with ballots is vested in the ballot clerks, and no elector can vote any ballot which he does not receive from those clerks. But ballot clerks are to provide ballots only for candidates nominated in the manner prescribed by the bill. Now, by the bill, no candidate can be nominated except either by a convention representing *three* per cent. of the entire vote polled at the last election, or by one thousand electors presenting a candidate for a State office, or one hundred resident electors presenting a candidate for a local office.

It is apparent that a party which did not appear at the last election, or, if appearing, did not poll *three* per cent. of the entire vote, cannot nominate a candidate by convention. And as to a nomination by electors, it is equally manifest that the bill leaves with the Secretary of State and County Clerks the absolute power of determining, at their arbitrary discretion, who are qualified voters competent to present a candidate. Furthermore, the only nominations which the bill recognizes, which are to be advertised to the public, and for which ballots are to be printed and provided, are nominations that are made, respectively, twenty and fifteen days before the election. It results, therefore, that if a candidate should die or decline in the interval between his nomination and the election, no provision is made for a substituted candidate, and that no ballot for a substituted candidate can be provided for electors. True, the elector may write the name of a candidate on his ballot, but this suggests a general and fundamental objection to the bill, namely, that it gives formal recognition only to candidates nominated by the prescribed methods. Plainly, a candidate whose name has been duly advertised as such by public authority, and whose name is by authority of law printed on the official ballot, is presented to the public with a recognition and sanction which give him an advantage over a competitor whom the law has not recognized as a candidate, or for whom the law has provided no ballot. It is not a legitimate exercise of legislative power to restrict the elector in the methods by which he may choose to present a candidate for the popular suffrage, and to discriminate between candidates because of the manner in which they are presented to the people.

Again, the names of candidates, when duly nominated in conformity with the provisions of the bill, are to be published, but to be published only in papers which represent the two parties that exhibited the greatest strength in the last election, so that the nominations of another party have not the advantage of advertisement in its own representative papers, or of official promulgation by any other medium than in the columns of hostile journals.

The conclusion is obvious and inevitable that, by the provisions of the bill, candidates for public office are not allowed to be presented to the popular suffrage under equal and impartial conditions; and that so an equal and impartial effect is not given to the ballots of all electors.

But the bill operates upon the exercise of the electoral franchise still more grievously and unjustly. By section 13 the bill provides that ' ballots other than those printed by the county clerks shall not be cast or counted in any election;' by section 19 that the ballot clerks ' shall have charge of the ballots and shall furnish them to the voters;' and by section 32, that 'no voter shall receive a ballot from any other person than one of the ballot clerks, nor shall any other person than a ballot clerk deliver a ballot to a voter;' and that 'no voter shall deliver any ballot to the inspectors except such as he receives from a ballot clerk.' Thus the bill arms the ballot clerks with an absolute control of the result of any and every election, for only such ballots as these clerks choose to deliver to voters can be cast or counted in any election. Now, these clerks, so invested with such formidable power, are not selected for their character, or for their political impartiality, but are appointed or elected from the two parties that polled the largest number of votes at the last election. The method thus provided for the appointment of ballot clerks plainly shows that they are to be representatives of political parties; in other words, to be partisans; and experience — notably the action of the Electoral Commission of 1877 — admonishes us with what unscrupulousness and audacity partisans will venture to nullify the recorded will of the people as expressed at the polls.

When the stake is so great as the prize of public office and the patronage of government, no apprehension of penal consequences avails to deter unscrupulous politicians from grasping power in defiance of law and justice. A bill therefore, which provides no other security for the sanctity of the ballot and the prevalence of the popular will than the probity or timidity of a couple of clerks, selected for their partisan affiliations, does not seem to afford sufficient safeguards for the fundamental principle of representative government. But the bill invests these ballot clerks with two specific powers from the abuse of which the frustration of the popular will in elections is to be apprehended as not only a probable but a necessary consequence.

1. By section 21 of the bill a voter is entitled to receive from the clerks but one ballot for each office. But by sec-

tion 24, if a voter spoil his ballot by accident or mistake, he may receive another ballot from the ballot clerks 'on satisfying them that such spoiling was not intentional.' If the voter does not so satisfy the clerks — both of them — his vote is lost. Now, here is a discretionary power — discretionary because the judgment is to be convinced — a power, which being discretionary is beyond control or punishment — here is a power lodged in the hands of either of these clerks to deny electors the right to vote and so, potentially, to control the event of an election.

2. By section 21 the bill provides 'that before delivering any ballot to an elector the two ballot clerks shall write their names or initials upon the back of the ballot;' by section 26, that no inspector shall deposit any ballot not so indorsed by the clerks; and by section 28, that 'any ballot which is not indorsed by the names or initials of the ballot clerks shall be void, and shall not be counted.' By the solemn decision of the highest court of the State this principle of law is incorporated in our jurisprudence, namely, that 'the rules for conducting an election, contained in the statutes, are intended to afford all citizens an opportunity to exercise their right to vote, to prevent illegal votes, and to ascertain with certainty the true number of votes cast, and for whom. These are directory, and not jurisdictional in their character.' (People v. Cook, 8 N. Y., 68.) Hence it is the settled law of this, and of the other States, that an irregularity in a ballot does not vitiate it, and that the fact of an actual vote by a competent elector, when judicially ascertained upon evidence, must be given effect in an election. But this bill proposes to disfranchise the elector and to reject his vote — to eliminate it wholly and irretrievably from the election — not for any fault or defect of the elector, but solely because of the intentional or inadvertent omission of a ballot clerk — for both must indorse — to write his initials on the back of a ballot. Though, on ju-

dicial inquiry, it be proved to demonstration that the ballot was official, and was duly cast by a qualified elector, still it must be rejected.

Such a provision, so contrary to settled law, so prejudicial to the rights of voters, and so fatal to the legitimate effect of popular elections, cannot receive my sanction.

The prodigious and irresponsible power with which the ballot clerks are armed, considered in connection with the policy of their appointment, and especially the fact that only two parties competing in an election can be represented by those clerks, presents a fatal objection to the bill.

But another equally valid and substantial criticism of the bill is suggested by the time allowed the elector for the preparation and deposit of his ballot. By section 22, on the receipt of his ballots the elector is forthwith to retire into the booth, and, at the expiration of five minutes he is to come out again, even though he has not been able to prepare his ballots or to vote. If many ballots are to be prepared by the elector; if he desires then to consider further of the candidates; if he chance to spoil his ballots and desires to procure new ones; if he do not wish to vote for any nominees whose names are printed on the ballots, but to write out the names of his own candidates; if, from mental or physical infirmity, he cannot read the ballots or make his mark, but must have these things done for him by a clerk, all these matters he must determine, arrange and complete within a period of five minutes, at the hazard of forfeiting his vote. The anxiety, the deliberation, the care, the caution with which electors at present prepare their ballots, meditating them for days, reconsidering and changing them down to the last moment, exhibits by experience that the hurry, confusion and precipitancy to which this bill compels the voter, is fatal to the free and full operation of his own intelligent volition in the direction of his vote.

I am satisfied, therefore, from the provisions of the bill already considered, that it impedes and hinders the elector in the exercise of his right of suffrage, and so is subversive of constitutional guaranties and obstructive of the prevalence of the popular will in the event of elections.

But the bill is equally obnoxious to another principle of our Constitution. By section 5, article 2 of the Constitution, it is ordained that 'all elections * * * shall be by ballot.'

Now, election by ballot means a secret vote; that is, a vote which the elector is not compellable to disclose. We know, historically, that the ballot was invented and introduced, wherever it is prevalent, to the end, and to the end only, of enabling the voter to maintain his independence by concealing his vote, and this effect furnishes the all-sufficient argument by which the ballot is recommended to universal adoption in popular governments. Only by veiling their votes from those upon whom they are dependent, can the poor and the weak cast their suffrages free from fear and influence, and the inviolable secrecy of the ballot-box affords the only safeguard for the unbiased and untrammeled expression of the popular will in elections.

But this bill makes provision for a compulsive disclosure of their votes by illiterate electors, and they the very class of voters who are weakest and most dependent. By section 25 an elector who cannot read or write must declare his choice of candidates to a ballot clerk, who shall thereupon prepare his ballots. Under the present law the illiterate or infirm elector reposes his trust in some confidential friend for the preparation of his ballots, but by this bill he must either lose his vote or avow it to a stranger. True, by section 32 the clerk is forbidden, under the penalties of misdemeanor, to disclose the elector's vote; but the compulsion upon the elector to communicate his vote to the clerk is still in the bill, and the guaranty that the clerk will not disclose the vote is altogether inadequate and illusory.

The difficulty of tracing the disclosure to the particular clerk of the two guilty of it, and the improbability of his conviction by a jury, constituted, in all likelihood, in part of his political allies, whose cause he has served by his crime, give him such an assurance of immunity that the prohibition of the statute will be of slight or no effect.

In any event, since the Constitution requires a vote by ballot, and since a vote by ballot means, in its essence, a vote exempt from compulsory observation or disclosure, and since this bill obliges a certain class of voters to avow their votes to a person not of their selection or confidence, the bill, in my judgment, affronts the spirit and the policy, if not the very letter of the Constitution.

I have received from Hon. Nelson J. Waterbury and Hon. Henry H. Anderson an able and elaborate opinion containing their views as to the unconstitutionality of this bill. Their opinion is also concurred in by such eminent lawyers as Hon. Frederic R. Coudert and Hon. John E. Burrill, well known throughout the State. These opinions are annexed to this memorandum as an appendix.

In addition to the constitutional questions involved, it is conceded that the bill contains many serious, important and substantial defects.

1. It omits, through inadvertence or otherwise, to provide any method or means of filling any vacancy which may occur upon any ticket by reason of the death, resignation or ineligibility of any candidate, happening within fifteen days of an election. In other words, a mere accident is permitted virtually to disfranchise a whole party, and no remedy is provided for it.

The presidency itself might thus be lost or won arising from the death or resignation of one or more presidential electors just prior to an election. It seems strange, indeed, that so vital an omission should have escaped the attention of the advocates of this measure.

2. It omits to provide how the ballot clerks, who are to serve at the first election to be held under the act, are to be elected or appointed.

3. It provides that the county clerk shall deliver the legal ballots to the board of inspectors of election of each election district before the opening of the polls. How long prior to such opening this delivery is to be made is not provided, nor is it prescribed how, when, or in what manner the ballot clerks are to receive the ballots from the inspectors. This was undoubtedly an inadvertence. It should have provided for the delivery of the ballots to the ballot clerks alone, who should have been the sole custodians thereof until they were handed by them to the voters.

4. It provides that the expense of the printing and the distribution of the ballots shall in all cases be a county charge. There is no good reason why counties should assume any part of the expenses of municipal elections, and this provision is unjust and was clearly not intended.

5. It requires that the selection of ballot clerks shall be made from the two principal political parties, refusing any representation whatever to the Prohibition Party, the labor people, or any other third party organization.*

6. It assumes to provide that no person shall be permitted to be near the elector when he is, ' within the rail,' and yet by the words which follow that clause it permits such contact when allowed ' by authority of the inspectors of election,' thus destroying the value of the other preceding provision.

7. Section 28 seems to provide that any informality, however slight, in a part of a ballot whereby a single name is obscured, renders the whole ballot void; and if this is not the proper construction, the provision is utterly meaningless and unnecessary.

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* As to bi-partisan election officers, see Const. 1894, art. 2, § 6, which requires their selection from the two principal political parties.

8. The provision in section 27 requiring the county clerk of each county to cause the name of the candidate to be printed ' in large type ' is altogether too vague and indefinite. No statute so important as this should be so loosely constructed, but all its terms should be couched in clear and explicit language.

9. So hastily or imperfectly was the measure prepared that it omits to provide what compensation, if any, the officials known as ' ballot clerks ' are to receive for their services. These clerks are clothed with tremendous powers, and are vested with great responsibility and much discretion, and if it is expected that they are to be a better class of men or to possess greater qualifications than the average inspector or poll clerk, their compensation should be ample, and whatever it is intended to be should be specified in the bill.

There are other imperfections, equally serious with those already pointed out, which are not now necessary to be discussed.

It is admitted that the system of elections proposed by this bill has not been tried in any State in the Union. It is an experiment pure and simple, so far as this country is concerned. It has been asserted that it is the Australian system, but it appeared upon the hearing had before me that it differed from that system in many important respects.

Under this bill any person who can procure a thousand names to his petition can become a candidate for a State office and compel all his tickets to be printed in every county in the State at public expense; and any adventurer, no matter how obscure or unworthy, who can manage to obtain one hundred names to his petition, can become a candidate for an office in a Senatorial or Congressional district, or in a county or municipality, and likewise compel all his tickets to be printed at public expense. With such inducements held out, the State, district, county and municipality would be likely to be flooded with candidates possessing little share of public confidence or favor, to the annoyance and distrust, as well as at the expense, of the people. The Australian system, no matter how undemocratic it may be in some respects, and how ill-adapted it may be to our American or republican institutions, nevertheless does not permit any such mischievous proceeding, but requires candidates to deposit with the proper official their full share of the expenses of the tickets and the election, not only to liquidate such expenses, but as a guaranty of the good faith of their candidacy. The taxpayers who pay the expenses of government are entitled to consideration as well as a horde of self-appointed candidates for official position.

The system contemplated by this bill is a mongrel one, which has not been tested anywhere by experience. The mere fact that the election tickets of every possible candidate are to be printed at public expense will not, of itself, produce any reform. It will not, of itself, prevent the assessment of candidates or their voluntary contributions, because there are other legitimate expenses to be provided for. It will increase the expense of elections to be borne by the people, stimulate a multitude of candidates, afford opportunities for collusion and fraud, but will not correct a single abuse now complained of. There never has been any serious complaint of a scarcity of election tickets anywhere, or that any elector has not been able to secure any or all the tickets he desired. At every important election every elector is overwhelmed with tickets of every sort, furnished him at his own residence by the respective parties, the organizations and by the candidates themselves and their friends. If he does not vote as he prefers, it is not because of a scarcity of tickets.

The assertion that the mere furnishing of tickets at public expense will create any reform of existing abuses, is a prediction without any thing substantial upon which to base it. This bill cannot be made a desirable measure by mere assertion. Neither can it be regarded as meritorious simply because it is patterned, either wholly or in part, upon systems in foreign countries, whose governments and institutions are wholly dissimilar from our own. Here the people are upon an equality, and at the ballot-box all are freemen and equals. It has never heretofore been regarded as a crime for one citizen, peaceably, to discuss with his neighbor at the polls the merits of the various parties and candidates, and to compare views and to inform each other, if they desired, how they intended to vote. The right of the people 'peaceably to assemble' is guaranteed by the Constitution,[j] which also forbids the passage of any law which shall 'abridge the liberty of speech,'[k] and the old fashioned New England town meeting, which is the foundation of all our election laws, recognizes the right of the people to converse with and 'electioneer' one another at the polls. Yet the mongrel foreign system for the first time proposed to be imported among us and fastened upon us by this bill, proceeds upon an altogether different theory, and regards these features derived from our original town meetings as objectionable and demoralizing, and proposes to characterize them as crimes. I am not prepared to believe that an enlightened public sentiment demands any such innovation of so doubtful propriety.

I would cheerfully approve a well-considered measure which should provide, substantially, that each elector, just before depositing his ballot, should enter a separate compartment or booth provided for that purpose, where he can alone assort and arrange his tickets to suit himself, and from this compartment proceed directly to the inspectors, unattended by any one, and deposit his ballots.

Such a provision, plain, simple, and easily understood, would tend to prevent or restrict bribery and corruption, as the bribers would be unable to know or determine what tickets had actually been voted, and would be less likely to attempt to improperly influence the voter. So far as this bill partakes of this feature it is meritorious and meets my approval. But it is incumbered and surrounded with other provisions, crude, unprecedented, unconstitutional, and fatally defective, which render its approval impossible.

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[j] Const. 1846, art. 1, § 10.

[k] Const. 1846, art. 1, § 8.

I realize that there is a class of well-meaning people who seem to hail with delight every new scheme which masquerades under the seductive name of ' reform,' especially if it comes from foreign shores and bears the approval of a monarchial government; but some other and better recommendations than these should be demanded where important legislation, overturning a system of elections which has been in operation for a century, is hastily and without due consideration sought to be engrafted upon our statute books.

Our election laws, above all others, should be carefully framed, closely scrutinized and deliberately enacted; and, if the further consideration of this subject shall be postponed until another year, the interests of the State will not suffer, especially in view of the conceded imperfections contained in the measure now presented for the first time.

It may be said that the defects and objectionable provisions of the bill may be repaired and corrected by subsequent legislation; and that it should receive the executive sanction in its imperfect state upon the chance of such future amendment. But the answer to this argument is two-fold: First, many of the mischievous provisions are not accidental, but inherent and essential, and cannot be obviated but by recasting the bill in its entire scheme and scope. Second, the Executive should not give the effect of law to an imperfect and mischievous measure, upon a contingency of the occurrence of which he has no assurance. I am to pass upon the bill as it is, not as it may possibly be in the future.

But the bill does not go into effect until the first of January, 1889; and no election under it will take place before November of that year. Hence there is ample time and opportunity for the Legislature to pass and present a bill which shall be free from legitimate objection, and which the Executive may approve in accordance with his judgment and the obligations of his official duty."

APPENDIX.

Our opinion has been requested as to the constitutionality of a bill, entitled 'An act to secure more fully the independence of electors and the secrecy of the ballot,' now awaiting the action of the Governor.

By the Constitution of this State (art. 2, § 1), every male citizen, having the qualifications therein prescribed, shall be entitled to vote in the election district of which he is a resident, for all officers 'elective by the people.' There is no restriction anywhere upon this right, nor is the Legislature authorized to impose any. The only power given to it is by the provision (art. 2, § 4), that 'laws shall be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage.'

By the first section of the proposed law, all ballots cast in elections for public officers are to be printed and distributed at public expense, as therein provided, and, by the fourteenth section, no other name can be printed upon the ballots than those certified to in the manner prescribed by the proposed law. Those names, by the second and fifth sections, are to be of candidates nominated for the State or its various divisions, by conventions representing, respectively, political parties, which, at the last preceding election, polled at least three per cent. of the entire vote cast within the territory for which the convention is held, or by the signatures of electors residing within the same limits, equal in number to at least one per cent. of the entire vote cast therein at the last preceding election, provided that the number of signers need not exceed one thousand for the State or a smaller number for a part of it. By the eighth section, certificates of such nominations must be filed not more than sixty days before the election, and for the State and parts of it including more than one county, at least twenty days before, with the Secretary of State, and, for the smaller parts, at least fifteen days before, with the county clerk, except that, in the city of New York, they shall be filed with the chief of the bureau of elections, and in the city of Brooklyn with the board of elections; and those officers are to print the ballots, and for that purpose the Secretary of State is to certify to each of them, the names of persons nominated by certificates filed with him, for offices which any of the electors within the city or county may vote for candidates to fill; and, by the thirteenth section, ballots other than those printed by them shall not be cast or counted in any election. The ballots so printed are, by the eighteenth section, to be delivered, before the polls are opened, at the polling place, to the board of inspectors of election in each election district, and, by the nineteenth section, two ballot clerks are to be elected or appointed, in the same manner as the inspectors, one to be taken from the political party that polled the largest number of votes at the last preceding election, and the other from the party that polled the next largest number, and they are to have charge of the ballots and furnish them to the voters. At the election, by the twenty-first section, each qualified elector is entitled to receive from the ballot clerks, and they must deliver to him, one ballot for each of the offices for which he desires to vote, which, by the fourteenth section, is to contain the names of all the candidates nominated for those offices; those nominated by each party being grouped together. The ballot clerks are required, before delivering any ballot, to write their names or initials upon the back of it. By the twentieth section, compartments are to be provided in each polling place, and into one of them, by the twenty-second section, the voter is required forthwith to retire alone, to prepare his ballots, for which task, by the twenty-third section, he is not to be allowed in any 'event longer than five minutes,' and he is then required to vote forthwith, without leaving the polling place. By the twenty-fourth section, if a voter shall spoil his ballot, upon satisfying the ballot clerks that it was by accident or mistake, he may, upon returning it, receive another in its place, and if any voter does not vote a ballot delivered to him, he must return it to the ballot clerks before leaving the polling place. In the canvass of the votes, by the twenty-eighth section, every ballot is to be void and shall not be counted upon which the names or initials of the ballot clerks are not indorsed, or from which it is impossible to determine the elector's choice. By the thirtieth section it is made an offense, punishable by fine and imprisonment, for any voter to receive a ballot from any other person than a ballot clerk; or to show his ballot after it is marked to any person in such a way as to reveal its contents; or to deliver any ballot to the inspectors, to be voted, except such as he shall have received from a ballot clerk, or to place any mark upon his ballot by which it may be afterward identified.

The mere statement of the constitutional provision and of the scheme of the proposed law is sufficient to show that the latter is, not only without authority, but in direct violation of the former. The Constitution gives the elector a right to make up or obtain his ballot when, where, and as he pleases, and to include therein names of his own selection, whether candidates or not, the loss being his own if he gives an imperfect or useless vote; while the legislative plan compels him to vote a ticket, limited to a select assortment of names, printed by the State and delivered to him by a public officer, which he must prepare as his ballot, so far as he is able, in a private place and alone, within the space of five minutes, and deliver to the inspectors as his vote, or lose his suffrage. Such shackles upon an elector the Legislature has no power to impose. They are in express disregard of one of the most sacred of his constitutional rights.

Besides this objection, there is the question of the eligibility of candidates. For some of the offices which the Constitution authorizes, it has prescribed qualifications; others it permits to rest upon the mere fact of citizenship. Conceding that the Legislature may establish qualifications for offices it authorizes, it need hardly be said, even to persons not lawyers, that the Legislature can neither add to nor take from the qualifications established by the Constitution for offices which it establishes.[1] The law now proposed affixes to these constitutional offices an additional qualification, that the candidates must be nominated a specified number of days before the election. This provision is not only unconstitutional, but involves a possible wrong, beyond that to a single elector. A candidate nominated as the proposed law requires, might die or be stricken with fatal sickness a shorter time than it allows before the election, and as new tickets could not be legally printed and distributed, one of the great parties of the State might be deprived of the opportunity of electing its candidate to an important office.

Upon the final passage of the proposed law in the Assembly, an amendment was inserted that nothing contained in it should 'prevent any voter from writing upon his ballot the name of any person for whom he desires to vote for any office.' The object was, manifestly, to avoid the objections which have been stated, but it fails in its purpose. The Legislature cannot enact a scheme in entire variance from the provisions of the Constitution, and then avoid the objection by a declaration that a person wronged may, nevertheless, exercise his constitutional right, when its action makes it practically impossible for him to do so. The substance, and not merely the letter, of the Constitution must be regarded. Its sacred and imperative mandates cannot be defeated by evasions.

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[1] Const. 1846, art. 12, § 1.

There is, however, another objection to the proposed law, from which no evasion is attempted, and which is so absolute that any attempt to avoid it would be futile. The Constitution provides (art. 2, § 5) that 'all elections by the citizens shall be by ballot.' Every intelligent man understands this to mean that the vote shall be secret, and, if one can be found who does not, the authorities that so declare are unanimous and conclusive.

The definitions are clear. Worcester's English Dictionary defines a ballot to be 'a little ball, a slip of paper or any thing which is used in giving a secret vote; a secret method of voting at elections.' Bouvier's Law Dictionary, under the title 'Ballot,' says: 'A little ball or ticket used in voting privately.' Lalor's Cyclopedia of Political Science, under the same title, in an article by A. R. Spofford, defines a ballot to be 'a method of voting designed to secure secrecy;' and adds, the 'secrecy and the sacredness of the ballot should be maintained at whatever cost. The more free the people, the more carefully will the secret ballot be guarded, as the best guaranty of personal independence.' The American Cyclopedia, title 'Ballot,' says: 'At Rome secret voting by ballot or tickets was employed;' and further: 'In England the ballot was proposed and received considerable support in the beginning of the eighteenth century, but it was not till 1830 that it became the subject of much discussion. In that year, O'Connell proposed it in the House of Commons and it received twenty-one votes. Mr. Grote for several years afterward was its most conspicuous supporter, but it had the approval of Macaulay, Cobden and, at length, Brougham, among others less noted. It was finally adopted, under the leadership of the Gladstone ministry, in 1872, with elaborate regulations to secure secrecy.'

The principle of the absolute secrecy of the ballot is also held by all the commentators on that branch of the law. Judge Story, in his Commentaries on the Constitution (§ 840), says: 'Mr. Justice Blackstone seems, indeed, to suppose that votes openly and publicly given are more liable to intrigue and combination than those given *privately and by ballot.*' And he also speaks (§ 841) of 'a secret or ballot vote.'

Judge Cooley, on Constitutional Limitations (5th ed., 760), says: 'The mode of voting in this country is almost universally by ballot. * * * The distinguishing feature of this mode of voting is, that every voter is thus enabled to secure and preserve the most complete and inviolable secrecy in regard to the persons for whom he votes.' Again (762): 'Public policy requires that the veil of secrecy should be impenetrable; unless the voter himself voluntarily determines to lift it; his ballot is absolutely privileged.'

Judge McCrary, in his work on Elections, which has additional value from his services as chairman of the Committee on Elections in Congress, and also upon the bench, says (§ 453) 'the chief reason for the general adoption of the ballot in this country is, that it affords the voter the means of preserving the secrecy of his vote, thus enabling him to vote independently and freely, without being subject to be overawed, intimidated, or in any manner controlled by others, and protects him from any ill-will or persecution on account of his vote. The secret ballot is justly regarded as an important and valuable safeguard for the protection of the voter, and particularly the humble citizen, against the influence which wealth and station may be supposed to exercise.'

In Williams v. Stein (38 Ind. R. 89), the Supreme Court of Indiana unanimously sustain the opinion of the Circuit Court, that the following statute, viz.: 'It shall be the duty of the inspector of any election held in this State, on receiving the ballot of any voter, to have the same numbered with figures, on the outside or back thereof, to correspond with the number placed opposite the name of such voter on the poll-list kept by the clerks of said election "was unconstitutional and void."' The Circuit Judge says: 'The common understanding in this country certainly is that the term "ballot" implies secrecy. I have nowhere found a *dictum* to the contrary.' After quoting a number of authorities he adds, 'it is believed that these authorities establish, beyond doubt, that the ballot implies absolute and inviolable secrecy, and that the principle is founded in the highest considerations of public policy. When our present Constitution was framed, voting by ballot was in vogue in nearly every State in the Union. That mode of voting had been known and well understood for centuries. The term ballot, as designating a mode of election, was then well ascertained and clearly defined. The eminent framers of the Constitution certainly employed this term with a full knowledge of its meaning.' He, therefore, holds 'that the act in question, which directs the numbering of tickets to correspond with the numbers opposite the names of the electors on the poll-lists, is in palpable conflict, not only with the spirit, but with the substance of the constitutional provision.'

The only doubt that has ever been expressed in regard to the absolute secrecy of the ballot through all time, has been when the right of the voter has been subsequently passed upon. The ruling upon this point has varied, and the inquiry has been more widely allowed in legislative than in judicial tribunals. Of course, when the action of an illegal voter is questioned, he cannot be compelled to testify, unless he is shielded from the effect of his testimony as against himself. In the principal case in which this subject has been considered, The People v. Pease (27 N. Y. 45), the title to an office was involved, and the Court of Appeals of this State held, five to three, upon opinions by Davies and Selden, JJ., that the witness having admitted that he voted, an answer to the question for whom he voted, could have no bearing upon his guilt or innocence. But the minority concurred in an opinion by Denio, Ch. J., in which he says: 'I have already alluded to the policy of the law providing for a secret ballot. The right to vote in this manner has usually been considered an important and valuable safeguard of the independence of the humble citizen against the influence which wealth and station might be supposed to exercise. This object would be accomplished but very imperfectly, if the privacy supposed to be secured was limited to the moment of depositing the ballot. The spirit of the system requires that the elector should be secured, then and at all times thereafter, against reproach or animadversion, or any other prejudice on account of having voted according to his own unbiased judgment; and that security is made to consist in shutting up within the privacy of his own mind all knowledge of the manner in which he has bestowed his suffrage.'

The twenty-fifth section of the proposed law provides that one of the ballot clerks shall prepare the ballots of any elector who declares under oath that he cannot read or write, or by reason of physical disability is unable to mark his ballots, to which there is the absurd alternative to such a man, that he may require one of the ballot clerks to read the ballots to him, so that he 'can ascertain the relative position of the names of the candidates on each ballot' and then retire to one of the compartments and prepare his ballots.

It is thus plainly required, to effectuate the proposed law, that electors who cannot read or write, naturalized citizens imperfectly acquainted with our language, soldiers disabled in battle, and other citizens afflicted by infirmity, as a prerequisite to the exercise of their constitutional right of suffrage, must share the secrecy of their ballot with one of the ballot clerks. The provision of the thirty-second section, that any officer of election who shall disclose the name of any candidate for whom any elector has voted, may be punished by fine and imprisonment, proves that the proposed law was passed by the Legislature with knowledge that it required some of the electors to disclose to one of the officers the contents of their ballots. Such a requirement is so clearly unconstitutional that no argument upon the subject is necessary.

The Constitution provides (art. 1, § 5), as does the Constitution of the United States, that 'cruel and unusual punishments' shall not be inflicted, yet the proposed law provides (§ 32), that any person who 'shall show his ballot after it is marked to any person in such a way as to reveal the contents thereof, or the name of the candidate or candidates for whom he has marked his vote,' may be punished by fine and imprisonment. Judge Cooley says (5th ed., 403) that 'it is certainly difficult to determine what is meant by cruel and unusual punishments. Probably any punishment declared by statute for any offense which was punishable in the same way at common law could not be regarded as cruel or unusual, in the constitutional sense. Probably any new statutory offense may be punished to the extent and in the mode permitted by the common law for offenses of similar nature.' It is certainly both novel and monstrous to declare an entirely innocent act, free from the slightest taint of crime, to be an offense punishable by imprisonment. A word may be as great torture to the mind as a wound would be to the body, and many men would prefer death to the degradation of imprisonment as a criminal. The prohibition of the Constitution relates not merely to the punishment but to the purpose of its infliction. To subject a man, for merely showing to a friend he met at the polling place, the ballot he was about to vote, that its correctness might be tested, to imprisonment as a criminal, is certainly both 'cruel and unusual.'

The proposed law appears to have been drafted with a view to promote a public good by purifying our elections, and it is advocated by many excellent citizens. But its infraction of the Constitution is so serious that no evil can justify its enactment. It is as important to maintain the rights and dignity of American citizenship, as to protect the ballot-box from the arts of corruptionists.

New York, June 5, 1888.

NELSON J. WATERBURY,
HENRY H. ANDERSON.

NEW YORK, *June* 5, 1888.

I concur with Judge Waterbury in the foregoing opinion, which I have read with great interest. His argument against the constitutionality of the bill appears to be unanswerable. I am aware that the proposed act commends itself to the minds of some of our best citizens, whose sole purpose has been to put an end to, or at least a limitation upon, the abuses which our present electoral system has created and developed. But the evil, if Judge Waterbury's views are sound, as I believe them to be, would be far greater than the mischief to be cured. We can ill afford to resort to measures of doubtful constitutionality in a matter of such serious importance to all our citizens. Confusion, uncertainty and doubt are elements that work peculiar mischief in matters affecting the right of suffrage, and even were there less certainty in my mind as to the correctness of the views stated, I should hesitate to approve a plan which may ultimately prove constitutionally vicious, for the purpose of escaping evils which, even if otherwise incurable, are not pressing enough to justify a possible breach of our organic law.

There are practical objections also to the proposed innovation, which should be remedied if it is ever to work smoothly and satisfactorily. These it is unnecessary to examine in view of the greater objections predicted. The secrecy of the ballot I believe to be an essential ingredient of our system, as founded on the Constitution, and I should not willingly assent to a plan which made it imperative on a voter to communicate his intentions to any person whatever. Nor would I esteem it just or wise to provide that a qualified voter should be debarred from the right of exhibiting his ballots to his neighbor for the purpose of comparing views, of making inquiries as to the fitness of candidates, etc. To declare such conduct a misdemeanor is to convert into an offense an act not only innocent in itself, but frequently essential to the proper understanding of the duty which the citizen is to perform. This feature of the act is also objectionable as preventing the illiterate voter from testing the accuracy of the interpretation given him by the official, and vests the latter with an uncontrolled power to do wrong, which it is equally unnecessary and unwise to confer. That such a scheme will enhance the difficulties and embarrassments of illiterate voters in the exercise of their right as citizens, and that it may in some cases operate as a prohibition, is, I am aware, a commendable feature in the eyes of some. But if such were the intention of the act, which I am quite sure is not the case, even those who approve of such limitation of the right of suffrage must agree that it would not be consistent with fairness or good faith to reach that end by direct methods.

FREDERIC R. COUDERT.

MILLS BUILDING, 21 BROAD STREET,
NEW YORK, *June* 5, 1888.

I have examined the bill entitled 'An act to more fully secure the independence of electors and the secrecy of the ballot,' and concur in the conclusions reached by Judge Waterbury and Mr. Anderson, that the bill destroys the secrecy of the ballot, and, in that respect and also in other respects, infringes upon the constitutional rights and privileges of voters. I am also of opinion that some of the provisions of the bill are harsh, oppressive and unjust, and ought not to be adopted even for the purpose of securing the very desirable object of promoting the purity of elections, which object, I think, will not be promoted or secured by the bill.

JOHN E. BURRILL.

June 9.

Veto filed with Assembly bill entitled "An act to authorize the Edison Electric Illuminating Company of the city of Brooklyn to lay its conduits, cables and wires in the streets, avenues and public places of the city of Brooklyn, and to furnish electric light in said city."

"This bill violates the principle of 'Home Rule' to which I am irrevocably committed. It is a special act of the Legislature granting to a single private corporation, by name, the right to open up and disturb the 'streets, avenues, lanes and public places' of Brooklyn, and to lay and maintain its electric wires therein, without any permission being first obtained from the local authorities.

By the provisions of the bill the local authorities are substantially ignored, and the franchise, with all the rights and privileges derived thereunder, is obtained directly from the Legislature.

The Common Council and the Mayor, under the charter of the city of Brooklyn, are already vested with the power and authority, in their discretion, to grant the franchise now sought to be obtained. The bill is clearly objectionable because it substitutes the Legislature and the Governor in the place of the Mayor and the Common Council as the power to determine the propriety of granting to this particular company the privileges desired.

I object to assuming any such responsibility and to determining any such question, but believe that such and all similar questions pertaining to local self-government should be passed upon by the local authorities themselves. In other words, Brooklyn should be governed at home rather than from Albany. This is the position that I have always endeavored to maintain during the four years of my gubernatorial service, and I cannot now consistently depart from it.

It is no impeachment of the soundness of this position to assert that the Legislature ought to interfere because the local authorities refuse to act, or act corruptly or improperly. Otherwise, the propriety of the principle of local self-government would depend for its enforcement upon the manner in which the local authorities govern, and would compel the Legislature to interfere whenever it should be claimed that the local authorities have acted improperly in a particular case.

Local authorities in cities are everywhere in the State properly vested with the authority to grant or withhold particular franchises pertaining to its streets, and if the Legislature establishes the pernicious precedent of ignoring the local authorities in one city and by a special act granting to a private corporation certain franchises in its streets, it cannot refuse to exercise its power in reference to all the other cities of the State where or whenever misgovernment is claimed to the prejudice of its citizens.

So long as it is the general policy of the State to confer upon the local authorities of cities the control over its streets and the right to regulate their own local affairs, that policy should be steadfastly adhered to.

If the Legislature in a particular case can, with propriety, grant an electric light franchise to a private corporation, there would be nothing to prevent its granting a liquor license to a particular individual where the excise board has improperly refused one, or a license for a particular place of amusement, or a special hack license, or a franchise to a particular gas company, or a water company, or a telegraph company; or directing the opening of a particular street, or the construction of a certain sewer in cases where it is conceded the local authorities have ample power in the premises. When once a departure is permitted from the beneficent principle of 'Home Rule,' it would be difficult to define, regulate or restrict the interference of the Legislature, and the only safety lies in not departing from it at all.

I realize that undoubtedly the citizens of Brooklyn are greatly desirous of the benefits which it is claimed would be conferred upon them by the competition afforded under the bill, but I am also convinced that as intelligent and reasonable people they do not expect nor desire the approval of a measure that would clearly infringe upon a principle firmly established, which, when fully understood, is really more essential to them and to the maintenance of good local government and would prove more beneficial to them in years to come, than any temporary advantage which it is represented they might derive from permitting the bill to become a law in violation of every correct principle of legislation.

If it be true that the local authorities of Brooklyn are recreant to the interests of the people, and fail to properly protect them from the demands of monopoly by allowing just and reasonable competition in the matter of electric lighting — the remedy is with the people themselves. They must expel their alleged unfaithful officials from the positions which they occupy, and select in their places those who will better serve the public.

No matter how meritorious it is claimed the objects of this bill may be, there is no excuse for a resort to legislation — private, special, mandatory, and otherwise objectionable in character — thereby establishing a dangerous and troublesome precedent, which would surely return to plague those who are now urging its adoption.''

June 9.

Veto filed with Assembly bill entitled "An act providing for the erection and construction of buildings, and the construction of sewers, water mains and roads on the Kings county farm at St. Johnland, Long Island."

'' This act proposes to take out of the hands of the local authorities of the county of Kings the construction of the improvements upon the county farm, and to place the same in the hands of a commission of private citizens named in the bill.

While three of the four commissioners named are officials, they are not made such *ex-officio,* but by the peculiar provisions of the bill hold their positions as individuals, and continue therein as county farm commissioners even after the expiration of their present terms of office; and the fourth commissioner has no official relation to the county whatever. Hence the bill is clearly objectionable, and violates the essential principle of local self-government, which requires that officials shall be duly elected by the people or appointed by local authorities — themselves selected by the people.[m]

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[m] Const. 1846, art. 10, § 2.

The policy of ignoring local officials and selecting officers to carry out strictly local purposes by naming them in a special act of the Legislature, is undemocratic and dangerous in the extreme.

The bill is not only extraordinary in some of its provisions, but the powers conferred are not sufficiently guarded and restricted.

I have received a letter from the Hon. Ripley Ropes (the resident State charity commissioner, who, by the terms of the bill, is to act in conjunction with said county farm commissioners in certain matters), stating that he is strongly opposed to the bill — regarding its provisions as monstrous — and that he should feel obliged to refuse to serve with the said county farm commissioners should the bill be approved.

It is evident that the measure did not receive at the hands of the Legislature that careful consideration which it deserved, and, although it is probably true that the delays and mal-administration charged against the present management of the county farm improvements have provoked a strong feeling in favor of a change and a desire for a radical reform in its methods, yet even this much-desired result should not be attained at the expense of a principle, the preservation of which is as essential as the immediate purification of the public service. If the board of supervisors of the county of Kings elected annually by the people cannot safely be trusted with the control and management of the affairs usually and ordinarily intrusted to such bodies throughout the State, then it would seem as though there might have been found some county officials of approved integrity and capacity in whom, if necessary, there could have been vested such control and management in their official capacity, rather than that a commission of private individuals should be named in an act of the Legislature. Even to remedy existing abuses an expedient of doubtful propriety should not be entered upon which involves the rights of the people.

The remarks of Governor Tilden in a veto message in 1876 upon a bill which he declined to approve, and which he declared created 'a novel and eccentric appointing power,' are appropriate in this connection.*

'Abuses or wrongs of local administration sometimes spring from defects of the governmental system, and sometimes from the frailties of human society. Existing evils naturally absorb public attention. Sometimes they are the motive to change and sometimes the pretext for change.

The new expedient, even if intended in good faith as a reform, may be prolific of still greater evils than those which call for a remedy. But the mischiefs which always result from the violation of established principles of responsible government, as it has grown up in centuries of experience — from a departure from the settled methods by which official accountability is created and made effective — are not usually foreseen by the unthinking contrivers of novel devices for instant change induced by impatience of present evils.

A still greater danger results from the fact that the occasions of such change are the opportunities for the worst designs of selfish cliques, factions and partisans and their schemes of ambition or plunder.'

In his annual message in 1875 he said as follows:†

'All the invasions of the rights of the people of the city of New York to choose their own rulers and to manage their own affairs — which have been a practical denial of self-government for the last twenty years — have been ventured upon in the name of reform under a public opinion created by abuses and wrongs of local administration that

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*[*Ante*, vol. 6, p. 1018.

†*Ante*, vol. 6, p. 733.

found no redress. When the injured taxpayer could discover no mode of removing a delinquent official, and no way of holding him to account in the courts, he assented to an appeal to the legislative power at Albany, and an act was passed whereby one functionary was expelled, and by some device the substitute selected was put in office. Differing in politics as the city and State did, and with all the temptations to individual selfishness and ambition to grasp patronage and power, the great municipal trusts soon came to be the traffic of the lobbies. A new disposition of the great municipal trusts has been generally worked out by new legislation. The arrangements were made in secret. Public opinion had no opportunity to act in discussion, and no power to influence results. Inferior offices, contracts, and sometimes money, were means of a competition from which those who could not use these weapons were excluded. Whatever defects may sometimes have been visible in a system of local self-government, under elections by the people, they are infinitely less than the evils of such a system, which insures bad government of the city, and tends to corrupt the legislative bodies of the State.'

Again, in a special message on May 11, 1875, he said:*

'The abuses and wrongs of the local administration which found no redress, generated a public opinion under which appeal was made, in the name of reform, for relief to the legislative power at Albany; and it was found that an act could be easily contrived whereby one official could be expelled from office and, by some device, a substitute put in his place. It was found, likewise, that the powers of an office could be withdrawn and vested in a different officer or in a commission, the selection of which could be dictated from the State capitol.

It is the experience of human government that abuses of power follow power wherever it goes. What was at first done, apparently at least, to protect the rights of the minority or of individuals; what was first done for the sake of good government, came in a little time to be done for the purposes of interested individuals or cliques. * * * *

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*Ante, vol. 6, p. 838.

These were the fruits, not of a popular election, nor of local self-government, but of the culmination of a system under which the governing officials had been practically appointed by legislative acts of the State.'

These views seem to be controlling upon the questions involved in this bill, and lead to the conclusion that it cannot be consistently approved."

June 9.

Veto filed with Senate bill entitled "An act in relation to bribery at elections."

"This bill is very properly entitled 'An act *in relation* to bribery at elections.' It is not an act to prevent or punish bribery at elections, for that is already provided for by existing law.

Section 4 of title 7 of the General Election Law (Chapter 130 of the Laws of 1842), as now in force, provides that 'if any person shall by bribery, menace *or by other corrupt means or device whatsoever, either directly or indirectly, attempt* to influence any elector of this State in giving his vote or ballot, or deter him from giving the same, or disturb or hinder him in the free exercise of the right of suffrage at any election within this State held pursuant to this chapter,' he shall be guilty of a misdemeanor.

This section of the present law is broad and comprehensive. It covers absolutely every possible form of bribery at elections. The law cannot be made more forcible or efficient by mere repetition, or by more detailed specification.

The provision in this bill prohibiting coercion or improper influence by employers is fully covered by the section of the present law above quoted, prohibiting the use by any person of menace or other corrupt means or device whatsoever, either directly or indirectly attempting to influence any elector in giving his vote. The clause has been held by the courts to be fully sufficient to accomplish the proposed object.

It cannot be claimed that this bill presented to me for signature prohibits any conduct which is not already prohibited by law. The utmost that can be claimed for the bill is, that it proposes severer punishment for certain forms of bribery at elections, and that it would render prosecution and conviction more probable. If such claims can be substantiated, the bill ought to become a law, and I would most cheerfully approve it.

The first change from the present law proposed by this bill is severer punishment for offenses already punishable as crimes. Certain specified forms of bribery, which are now only misdemeanors, are to be made felonies, and the maximum of imprisonment therefor is to be extended from one year to two years, the maximum of fine remaining the same. The further penalty is proposed of disqualification from voting or holding office for ten years from the time of conviction. This latter penalty, however, is in the direction of reducing rather than increasing the punishment, as all persons convicted of a felony are already, by law, disfranchised for life. But the net result of the bill, in this respect, is increased severity of punishment.

The difficulty with the present law is not that the persons convicted thereunder are insufficiently punished. The real difficulty is that violators of the law are, practically, not prosecuted at all. If any change is to be made in the present law, such change should be in the line of encouraging prosecution. But experience has thoroughly demonstrated that increased severity of punishment usually deters from prosecution and renders conviction more difficult. So far, then, as this bill proposes increased punishment for offenses already punishable, it is the reverse of a reform measure. So far as this element in the bill is concerned, prosecutions would be still less frequent and convictions still more difficult than under existing law.

The next set of changes proposed by this bill is a most radical and reckless departure in the opposite direction.

The bill practically provides that any person who will swear that he has sold his vote shall be exempt from all prosecution or punishment therefor, and shall, in addition, be entitled to receive fifty dollars from the county treasurer, in case he succeeds in convicting any person of having bribed or offered to bribe him. The creature who is so contemptible and degraded as to desire to barter the most sacred right of citizenship for money is thus encouraged to go into the market with the hope of gaining, not alone the paltry sum which the sale of his vote can command, but also the additional sum, magnificent in his eyes, of fifty dollars. Will not a man who is base enough to swear that he sold his vote for a few paltry dollars be base enough to perjure himself for the comparatively large sum of fifty dollars? A man who will swear to his own disgrace and impeach his own credibility is, by this bill, offered fifty dollars for his oath. The only practical effect of such provisions would be to encourage the blackmailing of men in public positions, where the false charge of corruption is often as damaging as the proven fact. This bill might well be entitled 'An act to encourage perjury and blackmail.'

It would, undoubtedly, be wise to exempt from prosecution one party to the transaction of bribery at elections by such carefully guarded provisions as are contained in the Code of Criminal Procedure with reference to the bribery of public officers. It is of comparatively little importance which one of the parties should be selected for the exemption. But it is most respectfully submitted that the law should go no further in this direction than to merely exempt from punishment the one accomplice as an inducement for him to testify against his partner in crime. The law certainly should not encourage the confessed criminal to commit the additional crime of perjury, or, still worse, tempt him to commit the original crime by rewarding him for his own detection, besides relieving him from punishment.

But this bill contains further features still more objectionable. It provides that ' the informer or informers who shall file with the district attorney an accusation charging any person or persons with violating the provisions of this act, with a list of witnesses, shall be entitled to receive from the county treasurer the sum of fifty dollars upon the presentation to such officer of a certificate of the district attorney that he is or they are the informer or informers in the specified case in which the conviction has been had.'

Informers have always been odious, and they have deserved their reputation. The system of prosecuting criminals by purchasing information from informers and accomplices is, at best, a system of fighting the devil with fire. Whenever public sentiment is aroused to a proper condemnation of any line of offenses prosecutions will be voluntary. Such public sentiment will not be stimulated by a course which renders the mode of prosecution more odious than the crime prosecuted.

There seems to have arisen during this session of the Legislature a mania in favor of the system of prosecution by informers. I have already had occasion to condemn this system in my disapproval of the bill of the present session prohibiting the sale of cigarettes to minors, a bill otherwise very meritorious in its main purpose, and also in several other bills presented to me while the Legislature was in session, which were recalled at my suggestion and amended by striking out such objectionable feature. The experience of our own country as well as that of Great Britain has thoroughly demonstrated the demoralizing influence of the ' informer ' system.

This bill is the outcome of an effort to obtain cheap credit for advocating reform measures by merely repeating and re-enacting laws, the only meritorious provisions of which are already upon the statute books. The impression is sought to be created that certain corrupt conduct would, for the first time, be made criminal by this bill; that this bill purposes to punish certain corrupt practices for which no punishment is now provided. As already indicated, this impression is a delusion. There is already law enough on the statute books to wipe out of existence every conceivable form of bribery at elections, and to send every participant therein to the penitentiary, if only the law were enforced. So far as this bill proposes changes from the present law, it would simply extend the corruption practiced at the polls to the worst corruption of perjury in the courts. The law would be still less likely to be enforced, and the very attempt to enforce the law would itself be made odious and offensive to all decent people.

Any bill which would make bribery at elections more difficult, or punishment therefor more certain, would receive my prompt approval. But the chief difficulty is not with the law. As I stated in my annual message to the Legislature of 1887:* 'It is the growing impression, founded upon much truth, that offices are too frequently sought by and bestowed upon wealthy men who obtain them by the lavish and improper use of money rather than any real merit of their own.' This extract indicates the chief source of bribery at elections. If wealthy candidates, or those having large means under their control, would cease to furnish to their hired agents the funds with which to purchase votes, much more would be accomplished toward the reduction of bribery at elections than can be brought about by re-enacting existing statutes, or even by the most wisely framed laws.

**Ante*, p. 314.

Moreover, this bill proceeds upon a defective theory of legislation. The bill should amend either the General Election Law or the Penal Code, instead of proceeding by independent enactment. With two independent statutes in force, providing for the punishment of the same offenses, it would be well nigh impossible for a district attorney to prepare an indictment upon which he could safely rely, and the enactment of this bill into a law would, therefore, only furnish another loop-hole for the escape of guilty men from conviction.

I have already disapproved of three other bills of the present Legislature, upon the ground that they should have been incorporated by proper amendment into the Penal Code instead of creating independent statutes."

June 9.

Memorandum filed with Assembly bill, Chap. 581, regulating fees of grain elevators. Approved.

"For many years there have existed loud complaints of unreasonable elevator charges. The subject has been investigated by divers Legislatures, and it is alleged that it has been satisfactorily established that such complaints are well founded. Notwithstanding this fact, legislation regulating and restricting elevator charges has been successfully resisted until the present year, and such charges still remain wholly uncontrolled by law.

It is proposed by this bill to declare and establish by statute what such charges shall be, and it is asserted that a fair and reasonable compensation is authorized, although it is conceded that a material reduction from the present customary charges is effected.

The opponents of the measure object to it upon two grounds:

First. That it is unconstitutional to regulate by law what charges may be made for the use of private elevators.

Second. That the charges fixed are an insufficient compensation, and will disastrously affect the business.

In reference to the first ground, it must be admitted that there may exist some doubt as to the constitutionality of the bill, or portions thereof. The right of the Legislature to regulate what charges may lawfully be made by any *corporation* which it creates or authorizes, is not denied, but this bill makes no discrimination between elevators owned by corporations and those owned by individuals. It would seem as though individuals would have the right to fix their own charges for the use of their own private property, and that the Legislature could not interfere therewith. It is argued that no one need use a private elevator unless he prefers so to do. Elevators are not necessarily for public uses, and there is not necessarily any monopoly created. They neither receive nor enjoy any franchise or privilege from the State.

It is urged that if the Legislature can dictate what a firm of individuals can charge for the use of their elevator, it can also regulate the prices which hotels can charge, or that individuals can charge for meats, milk, vegetables, or other necessaries of life, or fix the value of a man's services, or the value of the use of any or all of the property which he may own.

But the Supreme Court of the United States, in the case of Munn v. Illinois (4 Otto, 113), seems to have decided in favor of the existence of this power to regulate the charges of elevators whether they are used by corporations or individuals, and I am bound to respect such decision and to abide thereby, irrespective of any personal opinion which I might otherwise entertain. I cannot be expected to disregard the deliberate decision of the highest court in the land, and, although the opponents of this bill attempt to make a distinction between the Illinois case and the restrictions imposed under this bill, for which there is apparently some foundation, yet the claim made would seem to be more appropriately addressed to the courts than to the Executive.

Unless the Executive is clearly satisfied of the unconstitutionality of a measure he should approve it, and leave the question to be determined by the judicial tribunals. If he is in doubt upon the point, he should give the bill the benefit of the doubt. These are the rules upon which I have endeavored to act in the disposition of bills in the past, and I know of no reason why I should depart from them now. While there is much to be said that is plausible and even forcible in favor of the distinction sought to be drawn between the facts here presented and the facts shown in the Illinois case, yet I am not entirely convinced that such distinction is maintainable, and I therefore conceive it to be my province to leave the question to the courts.

In reference to the second ground, it may be stated that I find great difficulty in reconciling the conflicting claims of the friends and opponents of the bill. It is asserted on the one side that the charges permitted in the bill are reasonable and sufficiently remunerative, while on the other side it is claimed that they are so meagre as to virtually destroy the business.

Among the multitude of my engagements and the large number of bills demanding my attention, I have not had a sufficient opportunity to thoroughly investigate the subject. The Legislature in its wisdom has seen fit to establish a certain rate of compensation, and I must assume, under the circumstances, that this was not done except after due investigation and deliberation. The bill may do injustice to the parties affected by it, but I am not prepared to intelligently decide that it does do so. I have no power or opportunity to take evidence as to the profits which it is claimed elevators are making. They ought to receive a fair and reasonable remuneration on the capital invested, and should be protected therein.

On the other hand, extravagant or extortionate charges should not be permitted. The Legislature has fixed certain charges according to its best judgment and discretion. Why should I overrule that discretion, especially in view of the lack of accurate information concerning their reasonableness?

The canals of the State having been made free, its commerce should not be hampered and injured by unjust exactions. Elevators are said to stand in the very 'gateway of commerce,' and it must be assumed that the Legislature had no intention of unduly crippling them when it placed restrictions upon their charges.

It may be that the clause in the first section of the bill limiting the charges in certain cases to 'the actual cost of trimming or shoveling to the leg of the elevator' was of doubtful expediency and imperils the constitutionality of the measure, but this is also a contested question for the courts. The ostensible object of the measure is to relieve commerce from unjust burdens, and indirectly to break up alleged existing partial monopolies, and, as such, it seems to commend itself to public approval; but if, after a fair and impartial trial of its merits, it fails to accomplish the beneficent purpose so confidently predicted for it, and either fails to materially benefit the people in whose behalf it is specially urged, or proves destructive of elevator property and interests, or unwarrantably injures or cripples them, or it is shown that the charges are so restricted that a fair and reasonable profit upon the capital invested cannot be earned, it is believed that its prompt repeal or modification would surely follow. But until these facts shall be demonstrated by actual results, I consider it to be my duty to approve the measure in order that its merits may be thoroughly tested."

This act was sustained in Budd v. New York (1891), 143 U. S. 517, affirming 117 N. Y. 1, 621

June 9.

Memorandum filed with Assembly bill, Chap. 577, reorganizing the Game and Fish Protectors. Approved.

"The power to appoint game and fish protectors has been for several years vested in the Governor while the duties of such protectors have been performed under the supervision of the Commissioners of Fisheries. This bill proposes to take from the Governor the power of appointment and place it in the hands of the Commissioners of Fisheries. Notwithstanding the fact that this change deprives the Executive of the selection of some sixteen officials, I have concluded, after careful examination, to approve the measure, believing that by making such officials directly responsible to the appointing power a more reasonable and satisfactory administration of the game and fish laws of the State will be attained."

This act was sustained in People v. Rouse (1891), 39 N. Y. S. R. 656.

June 9.

Memorandum filed with Senate bill, Chap. 580, relating to the normal college of the city of New York. Approved.

"This bill, although not approved by the Mayor's Conference, is approved by the majority of the Board of Education of the City of New York. I do not regard the bill as mandatory in any sense that can be deemed objectionable. The Board of Education is one of the local authorities of the city, and is simply given authority, within certain limits, to determine the amount of moneys which should annually be raised for the support of such college. Such sum could not, in any event, exceed the amount fixed in the bill.

The bill has many meritorious features, and I think I ought to approve the same, although I would have preferred some of its provisions to have been somewhat different."

June 9.

Memorandum filed with Assembly bill, Chap. 582, providing for repairs to the ceiling of the Assembly chamber. Approved.

"This act provides for the repairing of the ceiling of the Assembly Chamber by a committee of four members of the Assembly and the Speaker, and makes an appropriation therefor.

The paramount and pressing necessity for these repairs is conceded. The present state of the Assembly Chamber, with its ceiling in a dangerous condition, propped up with huge temporary timbers in the center thereof,—and presenting an unsightly spectacle,—is a disgrace to the State.

This measure, however, is subject to grave objections. In the first place, it ignores the regular State officials, who by virtue of Chapter 349 of the Laws of 1883 are the Trustees of the Capitol, and are vested by statute with the control, management and necessary repairs thereof. No good reason exists why the Trustees should not be permitted to exercise the functions of their position in reference to these, as well as all other needed repairs. The bill upon its face smacks strongly of special, unnecessary and partisan legislation.

In the second place, the placing of such a work in the hands of a committee of the Legislature is unbusinesslike, and furnishes a pernicious or unwise precedent. The committee is to be appointed by the Speaker, and it may be assumed that not a single member thereof will possess any special or peculiar qualifications for the place. None of them are likely to know anything about the construction or repair of buildings. Such work should have been placed in the sole charge of a regular official of the State or under the supervision of the Commissioner of the Capitol, — an able, responsible architect and builder.

I confess that I do not like the bill either in its substance or details, and desire to enter my protest against such kind of legislation. If members of the Legislature are to be placed in charge of public work of this character, for which they are likely to be wholly unfitted, this measure may be followed up another year by bills of a similar tenor, designating members of the Legislature to assume charge of the construction of armories, arsenals, asylums and other public buildings or public works throughout the State, during the recess of the Legislature.

The refusal of the Legislature to pass any other measure than this for the repairing of the Assembly ceiling can only be traceable to partisan considerations. There was manifested a disposition this year to refuse or restrict all appropriations, no matter how reasonable or necessary, where the control was vested in officials whose political affiliations were opposed to those of the majority of the Legislature. This was a very short-sighted and narrow conception of public duty, and naturally led to this novel and unprecedented measure. The bill is not founded upon any principle or sound policy, but is clearly a mere temporary expedient. The Legislature seems to have taken advantage of the exigency of the situation, and passed this measure too late for an amendment, in hopes of compelling Executive approval.

It is understood that the committee is to be composed of two Republican and two Democratic members of the Assembly, and the Republican Speaker is to constitute the fifth member and hold the balance of power and control. Such a committee not infrequently constitutes the worst kind of a commission, and oftentimes leads to deals, jobs, abuses and corruption. But the Legislature persistently refused to pass any other measure, and the question is presented, what disposition should be made of this bill, under these circumstances? An emergency is presented. If I refuse to approve this bill the Assembly ceiling must remain in its present disgraceful, if not dangerous, condition, for another year and during another session. If I approve it I do so as a matter of expediency and not because it really meets my judgment.

After careful reflection, I have concluded, with considerable reluctance, to yield my own personal convictions, and to approve the bill, asserting at the same time that it should not be considered a proper precedent in the future, but the bill is only permitted to become a law because of the extraordinary existing situation.''

June 9.

Memorandum filed with Senate bill, Chap. 578, for continuing work on the State Capitol. Approved.

''This bill is not as objectionable as the one relating to repairs of the Assembly ceiling; nevertheless, the greater portion of it is wholly unnecessary. That part which makes an appropriation for the completion of the work upon the State Library portion of the Capitol, is eminently proper. It is absolutely essential that such work should be completed. But all the rest of the bill is ill-advised, and might well have been dispensed with, as it creates an unnecessary commission, consisting of the Lieutenant-Governor, the President *pro tem.* of the Senate, and the Speaker of the Assembly, who, together with Commissioner Perry, are to have control of the work.

The bill does not repeal Chapter 330 of the Laws of 1885, which created a board of Advisory Commissioners, consisting of divers other State officers, to have control of all further work upon the Capitol, but said act is entirely ignored. There is no necessity for any new commission or any commission whatever, and Commissioner Perry alone should have been permitted to have proceeded with the work under the power and authority already vested in him by law.

My views as to the proper authority under which the work on the Capitol should be completed were stated in 1886 as follows:*

'The construction of the Capitol should remain in charge of a competent architect and builder appointed by the Governor of the State, and such builder should be left free from control by any commission in every essential particular.'

This is my judgment at the present time.

If this and the other bill relating to the Capitol shall become law, the spectacle will be presented of two separate and distinct commissions having the control and management of work in different parts of the same building at the same time.

The non-completion of the Capitol,—especially its present condition,—is a standing disgrace to the State. There was no adequate reason why a sufficient appropriation to fully complete the Capitol should not have been made, and Commissioner Perry been permitted to have charge of the work. But, instead of such legislation, insufficient appropriations are made in two different bills to continue small portions of the work under two different commissions, presenting a sad commentary on the intelligence and businesslike capacity of the two houses of the Legislature.

But, as the need for the contemplated work is so very urgent, and as the proposed commissioners may in one sense all be regarded as State officers, as distinguished from members of the Legislature merely, probably under the circumstances the interests of the State will be better subserved by allowing the bill to become a law, suggesting, however, that it ought not to constitute a precedent for any future legislation concerning work upon the Capitol."

***Ante*, p. 228.

June 9.

Memorandum filed with Senate bill, Chap. 579, providing for a bridge on Hawk street, Albany. Approved.

"Upon the hearing of this bill I was inclined to think that I could not approve it, but upon further reflection I am convinced of its propriety.

Last year the Legislature passed an act which I did not expressly approve but permitted to become a law, authorizing the construction of the viaduct in question, but leaving the determination of the propriety of making such improvement to the Common Council. The Common Council has not acted upon the matter at all, and there seem to be many difficulties incident to its favorable consideration of the subject.

This bill changes the law of last winter, in substance by substituting the Mayor in the place of the Common Council as the local official or tribunal to investigate the subject and determine the advisability of the improvement. If the Mayor, acting in behalf of the whole city, shall, after a hearing of all sides, and due consideration of the question, decide that the viaduct ought to be built in the manner proposed, he is authorized by the terms of this bill to appoint commissioners for that purpose.

I am satisfied that the bill is not mandatory in its provisions, but only permissive. It simply *authorizes* the Mayor to act according to his own judgment and discretion. He is just as much a part of the local authorities of the city as the Common Council, and no question of 'Home Rule' seems to be involved.

Ordinarily I would prefer that such questions should be determined by the local Legislature, instead of a single official, even though that official is the responsible head of the city government, yet the selection of a local authority as the proper custodian for the exercise of municipal powers is a matter principally addressed to the sound discretion of the Legislature, with which, in this instance, I am not disposed to interfere.

All the representatives from Albany county in the Legislature favored the bill. The newspaper press of the city appears to be unanimously for it. The most public-spirited citizens of Albany are understood to urge it, and a large share of public sentiment favors it. The necessity of the proposed improvement is conceded by all.

Under these circumstances, I do not think that I would be justified in withholding my approval from the measure."

June 9. The omnibus veto included the following bills:

Senate bill, not printed, to provide for clearing out the obstructions in the outlets of Otter lake and Parker's pond, in the town of Cato, in the county of Cayuga, and for draining the swamp lands adjacent thereto.

This bill contains so many violations of the principles of sound legislation, that it seems worth while to call attention to a few of the most objectionable.

First. It is unnecessary special legislation. The general drainage act was thoroughly revised in 1869, and again in 1886, and contains ample and carefully guarded provisions under which all the work proposed can be much more safely performed than under this bill.

Second. The bill appoints specifically the local commissioners who are to have charge of the work, whereas the general law more wisely provides for the appointment of such commissioners by the county judge upon the petition of freeholders interested. Certainly the local authorities, before whom both the parties in favor of and opposed to the work may be heard, must be more competent judges of the proper persons to be appointed commissioners than the Legislature can be.

Third. The bill is mandatory, expressly directing the commissioners appointed to perform the proposed work, whereas the general law very properly leaves the performance of the work to the discretion of the commissioners. The Legislature discharges its proper functions in this respect when it has given commissioners power in the premises, and should leave them to pass upon the propriety or necessity of performing the work.

Fourth. The bill is substantially defective. It provides for raising money for carrying on the work by assessments upon parties to be benefited, and for the collection thereof before the work is to be done, and for re-assessment in case the amount first collected shall prove insufficient, but makes no provision for a distribution of the surplus in case the amount first assessed and collected shall prove to be more than is necessary.

Fifth. The bill is unconstitutional. This is clearly a local bill for draining swamps or other low lands. Article 3, section 18 of the Constitution provides that the Legislature shall not pass a private or local bill for draining swamps or other low lands.

Assembly bill No. 524, to amend the act providing for draining and reclaiming overflowed and wet lands adjoining Black lake and its tributaries, "and for other purposes."

Unconstitutional special legislation. The title of this bill would indicate that the bill violates the provision of the Constitution that no private or local bill shall embrace more than one subject, which shall be expressed in the title.[n] (See Johnston v. Spicer, 107 N. Y., 185.)

But however that may be, this is clearly a local bill for draining swamps or other low lands. Article 3, section 18 of the Constitution provides that "the Legislature shall not pass a private or local bill * * * for draining swamps or other low lands."

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[n] Const. 1846, art. 3, § 16.

Assembly bill No. 1073, to authorize certain persons to construct a railroad from the village of White Plains to a point in the division line between the States of New York and Connecticut.

Unconstitutional special legislation. This is a private or local bill granting to a corporation or individuals the right to lay down railroad tracks, and is, therefore, clearly in violation of section 18 of article 3 of the Constitution, providing that the Legislature shall not pass a private or local bill granting to any corporation, association or individual the right to lay down railroad tracks.

Assembly bill No. 641, entitled "An act to conform the lines of Franklin avenue to the line of Eighteenth avenue, in the town of New Utrecht, in Kings county."

Unconstitutional special legislation. This is a local bill, in effect laying out a highway in a town, and would, therefore, appear to be in violation of the constitutional provision prohibiting the Legislature from passing a private or local bill laying out a highway.[o]

Assembly bill No. 639, in relation to streets and avenues in Parkville, in the town of Flatbush, Kings county.

Unconstitutional special legislation. This is a local bill, in effect laying out certain highways in the town of Flatbush. Article 3, section 18 of the Constitution provides that the Legislature shall not pass a private or local bill laying out roads or highways.

Assembly bill, not printed, entitled "An act to constitute a separate road district in the village of Chesterville, in the town of Westerlo, in the county of Albany."

It would seem that there must be a sufficient variety of general laws relating to the working of highways already upon the statute books to enable the village of Chesterville to adjust its highway system without the necessity of a special application to the Legislature. Moreover, section 18 of article 3 of the Constitution provides that the Legislature shall not pass a private or local bill laying out, opening, altering, working or discontinuing roads, highways or alleys. This bill apparently comes within this prohibition of the Constitution, and would probably be void if it became a law.

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[o] Const. 1846, art. 3, § 18, am. 1874.

Assembly bill No. 420, to determine the number, term of office and duties of Commissioners of Highways for the town of East Chester, Westchester county.

This is objectionable special legislation, even if it is constitutional, which I very much doubt. The general laws already provide a variety of systems of commissioners of highways in towns. The Constitution provides that the Legislature shall not pass a private or local bill laying out, opening, altering, working or discontinuing roads or highways. This bill is in violation of the general spirit of the Constitution, if not of its letter.[p]

Assembly bill No. 1131, to create a board of town auditors for the town of Wappinger, Dutchess county.

Unnecessary special legislation. Chapter 585 of the Laws of 1886, as amended by chapter 488 of the Laws of 1888, is a general law applicable to all the towns of the State, including the town of Wappinger. Under this general act the town of Wappinger can accomplish substantially all the objects sought to be gained by this special bill.

Assembly bill No. 602, to incorporate the Edgewater Fire Department.

Unnecessary special legislation. The objects of this bill can be substantially accomplished by proceeding under already existing general laws.

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[p] Const. 1846, art. 3, § 18, added 1874.

Assembly bill No. 405, change the name of The Schenectady Free Dispensary.

Senate bill No. 582, to change the name of the New York Real Estate Guaranty Company, and to define its powers.

Assembly bill, not printed, to change the name of St. George's Methodist Episcopal Church at North Haverstraw.

Senate bill, not printed, to change the name of the Brooklyn Guaranty and Indemnity Company.

Unnecessary special legislation. Chapter 322 of the Laws of 1870 is a general act authorizing the Supreme Court, upon proper application, to change the name of any corporation, except a bank, banking association, trust company or insurance company. Chapter 518 of the Laws of 1887 authorizes the Supreme Court, upon proper application, to change the name of any bank, banking association or trust company organized under the laws of this State.

By proceeding under one of these general laws each of these corporations may procure its name to be changed without the necessity of further legislative action.

Assembly bill No. 818, to amend chapter 195 of the Laws of 1882, relating to the highways in the several towns in the county of Onondaga.

Defectively drafted. This bill proposes to amend the entire chapter 195 of the Laws of 1882, "to read as follows: § 1," etc. This would leave said chapter 195 without any title. As said chapter is a local act, the Constitution requires that it shall have a title.[a] By thus amending such chapter, so as to strike out the title thereof, this bill would, in effect, repeal the act it seeks to amend, and such repeal would be the only net result of this bill.

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[a] Const. 1846, art. 3, § 16.

Senate bill, not printed, to amend the charter of the Buffalo Young Men's Christian Association.

Defectively drafted. This bill amends an entire chapter in such a way as to strike out the title of the act proposed to be amended. As that is a private or local act, the Constitution requires that it shall have a title.[r] The only effect of this bill would, therefore, be to repeal the act sought to be amended.

Assembly bill No. 873, to amend the act relating to the incorporation of churches in connection with the Protestant Episcopal Church.

This bill is defectively drafted in several respects.

First. The bill amends an amendatory act in such a way as to make the latter an independent act instead of amending, as it properly should, the original act as amended.

Second. It further amends the amendatory act in such a way as to strike out the entire title, and possibly also the enacting clause of the act sought by this bill to be amended. It is possible that a title is not necessary to the validity of a general law, but it is certainly a serious defect to so amend even a general law as to strike out its title. I deeply regret that I cannot consistently approve this bill, by reason of these serious formal defects, as the substantial provisions of the bill appear to be highly meritorious and are greatly desired by those in authority, entitled to speak in behalf of the Protestant Episcopal Church.

Assembly bill No. 878, to regulate annual elections for church wardens and vestrymen of parishes in connection with the Protestant Episcopal Church.

This bill is also defectively drafted. By clerical errors the substitution of the word 'hereinafter' for 'hereafter' and 'action' for 'act,' so substantially destroys the sense of important provisions in the bill as to render their validity doubtful, as well as to deface the statute books with the appearance of slovenly legislation.

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[r] Const. 1846, art. 3, § 16.

The purposes of this bill appear also to be highly meritorious, and I regret that for the reasons above stated I cannot approve the bill.

Assembly bill No. 544, to amend section 14 of the General Railroad Act (chapter 140 of the Laws of 1850).

Defectively drafted. The use of the word 'under' for 'over,' by a clerical error, would occasion serious inconvenience in the practical workings of this very important section.

It would also seem that the effect of this bill upon chapter 515 of the Laws of 1867 has not been sufficiently considered.

Assembly bill No. 833, to amend section 7 of chapter 133 of the Laws of 1847, authorizing the incorporation of rural cemetery associations.

Defectively drafted. The use of the word 'and' for 'any,' by a clerical error, would destroy the sense of an important provision of the bill.

Assembly bill No. 1008, to prevent the obstruction of the St. Regis River.

Defectively drafted. The use of the word 'sewers' by clerical error, instead of 'rivers,' destroys the sense of an important provision of this bill.

Senate bill No. 87, to amend chapter 359 of the Laws of 1885, amending chapter 361 of the Laws of 1881, so as to except agricultural and horticultural societies from the corporations taxable thereunder.

Defectively drafted. This bill amends section 3 of an act which has but two sections. The evident intention of the framer of this bill was to amend section 3 of chapter 361 of the Laws of 1881, which was amended by section 1 of chapter 359 of the Laws of 1885, 'so as to read as follows: § 3,' etc. But this bill purports to amend section 3 of said chapter 359, whereas such chapter has no section 3. It is, therefore, difficult to see how this bill can effectually amend such section. This bill would probably be void even if I should approve it. At least its validity would be so doubtful as to require litigation to settle the question.

This defect has resulted from the common error of amending an amendatory act, instead of the original act as amended.

I heartily approve the purpose of the bill and regret very much that my approval thereof would be a useless formality.

This bill is another of the many illustrations of the value of my repeated recommendations that the Legislature employ competent counsel, who could devote his attention exclusively to detecting such errors, and suggesting their correction before the bills are finally passed by the Legislature.

Senate bill No. 577, to amend the charter of the village of Bath-on-the-Hudson.

Defectively drafted. The bill purports to amend section 25 of title 2 of the village charter. There is no section 25 of said title.

Assembly bill No. 1148, to amend the charter of the village of Weedsport.

Defectively drafted. In amending section 27 of the charter 'to read as follows:' an important amendment added to said section by chapter 95 of the Laws of 1885, was accidentally omitted, thus repealing provisions more important than the amendments proposed by this bill. Upon notifying the village authorities of such defect, they have requested that the bill should not become a law.

Assembly bill No. 375, to amend the charter of the village of Port Chester.

Defectively drafted. This bill proposes to add at the end of said charter three sections to be known as sections 50, 51 and 52, whereas chapter 542 of the Laws of 1887 has already added at the end thereof sections 50 to 53, inclusive.

Assembly bill No. 778, to amend the act constituting the Sacandaga river and its tributaries a public highway.

Defectively drafted. This bill proposes to amend 'section 2 of chapter 653,' without stating the year in which the chapter was passed.

Assembly bill No. 822, to create a board of fire commissioners in the village of Mechanicville.

Defectively drafted. This bill should amend the village charter, instead of proceeding by independent enactment. The bill also makes the holding of real estate a qualification for holding an elective office, which is, in my opinion a serious substantial defect, and is contrary to the general policy of our law.

Senate bill No. 285, to amend section 25 of chapter 230 of the Laws of 1847, entitled 'An act in relation to the judiciary.'

Defectively drafted. The section of the act proposed to be amended by this bill was repealed by chapter 593 of the Laws of 1886, and the substance of said section was incorporated in the Code of Criminal Procedure. This bill should, therefore, proceed by proper amendment to the appropriate section of said Code.

Assembly bill No. 1020, amending the charter of the village of Lima.

This bill proposes to repeal an act amending section 11 of title 5 of the village charter. This would leave that section standing as originally enacted. But the same section of the village charter was amended ' to read as follows,' etc., by Assembly bill No. 1019 of the present year, which is now chapter 339 of the Laws of 1888. This bill is, therefore, wholly unnecessary.

Assembly bill No. 776, to amend the charter of the village of Horseheads.

The second section of this bill, authorizing the board of trustees to raise moneys necessary to carry into effect the orders of, and to pay the expenses incurred by the board of health, appears very meritorious. I regret that this amendment is coupled with another amendment contained in the first section of the bill, which is so objectionable as to prevent my allowing the bill to become a law.

By the amendment to the first section, the board of trustees would be given power to *prohibit* or regulate by license, all sales of goods, wares and merchandise and personal property by retail, within the village, *and within fifty rods of the corporate bounds thereof,* by any person not a *bona fide* resident and inhabitant of said village, or by a corporation not having an office for the transaction of their business and financial concerns in said village.

Such unlimited power to prohibit legitimate business within the corporate limits of the village would be unusual and extraordinary, and the full exercise of such power would be clearly unconstitutional. The proposal to confer upon the village trustees power to prohibit legitimate business outside of the village limits is too absurd to admit of discussion.

Assembly bill No. 278, to amend the act establishing a state board of pharmacy and regulating the practice of pharmacy throughout the State, except in certain counties.

This bill substitutes for the phrase ' small villages and country districts having no store where pharmacy is practiced,' the phrase ' small villages or country districts having a population of 1,500 or less.'

It would be practically impossible to prove in many cases whether the population of unincorporated small villages and country districts having no definite boundaries, is greater or less than 1,500.

If the present law is harsh or unjust in such localities, this is not the proper way to amend it.

Assembly bill No. 944, to incorporate Webb's Academy and Home for Ship-builders.

This bill begins with a long preamble, which, though not substantially objectionable, is an antiquated and mostly obsolete form of drafting bills, and occasions much unnecessary repetition. Section 6 exempts the property of the corporation proposed to be formed from taxation.

It seems much more desirable that such exemption should only be in pursuance of a general law applying equally to all similarly situated corporations. While section 4 of the bill provides that the corporation may receive from William Henry Webb all property, real and personal, which he may grant and assign, subdivision 6 of section 7 provides that nothing but the real estate or other property *devised* by him shall be used for building purposes.

While these and some other minor objections to the bill are not of a very serious character, and the object of the bill is evidently of a benevolent and charitable character, which ought to be encouraged, yet it seems that the advantages to be gained in a more perfect form of the bill for presentation to the next Legislature will more than compensate for the delay necessary therefor.

Assembly bill No. 877, to exempt the property of the Gallaudet Home from taxation.

Senate bill, not printed, to exempt certain property of the Catholic Union of the city of Albany from taxation.

The language of my veto message of Senate bill No. 362 of the present year, entitled 'An act to exempt the property, real and personal, of the S. R. Smith Infirmary from taxation,' is equally applicable to these two bills as follows:*

'This is special legislation, and, therefore, objectionable. Undoubtedly the S. R. Smith Infirmary is a worthy charitable institution, and if special bills are to be passed exempting such kind of property from taxation, this institution should be included. But I have heretofore objected to this class of legislation upon the ground that the general statute in reference to taxation should be amended covering cases of this character. The only exception I have made to this rule is where original corporations have been created and a clause has been permitted to remain therein exempting its property from taxation. This bill does not incorporate any institution nor is it an amendment of any charter, but it is a special bill relating only to the subject of exemption. I refer the Senate particularly to my veto last year of Senate bill No. 59, to exempt from taxation the realty of the Young Women's Association of Troy.'

Last year I disapproved of bills exempting from taxation the property of the following institutions:

The Masonic Hall Association of Buffalo, The Methodist Episcopal Hospital of Brooklyn, and The Bedford Reformed Dutch Church.

I regret that I cannot, therefore, approve these bills of a similar nature passed this year.

Assembly bill, not printed, to revise the charter of the city of Oswego.

The only amendment proposed by this bill is to make the mayor a member of each board of commissioners of said city. This would evidently destroy the non-partisan character of said boards, which is usually considered one of the chief reasons for their existence. Oswego is a Republican city. Non-partisan boards should be preserved in such cities as well as in those having a Democratic majority.

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* *Ante*, p. 538.

Assembly bill No. 253, to establish the Mount McGregor Memorial Association.[29]

It is sufficient to state that the Hon. Joseph W. Drexel, one of the incorporators named in this bill, has died since this bill was drafted. This bill would undoubtedly, in its main features, carry out the generous intentions expressed, and, so far as possible, carried out by Mr. Drexel in his lifetime, but certain important provisions of the bill would doubtless have been differently drafted if the bill had been prepared subsequent to his decease. In view of that sad event, a new bill should be prepared and presented to the next Legislature.

Senate bill No. 135, to amend chapter 267 of the Laws of 1875, for the incorporation of societies or clubs.

I have been compelled to select between two bills presented to me, each amending section 3 of this act, ' to read as follows,' etc.

The introducer of each bill claims that the other bill is defective. After consultation with several eminent lawyers I am advised that the Assembly bill is preferable. The present bill omits to confer upon the corporations express power to enact by-laws, by reason whereof it is very doubtful whether the general language of this bill would allow these corporations to accomplish the special objects proposed by the Assembly bill, which has now become a law.

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[29] The Mount McGregor Memorial Association was incorporated in 1889, chapter 5, " for the purpose of receiving the title of the Drexel Cottage on Mount McGregor," in Moreau, Saratoga County, in which the late Ulysses S. Grant passed the last months of his life and died, also the contents of the cottage, and the lot on which it was situated.

Senate bill No. 130, to amend chapter 706 of the Laws of 1887, entitled 'An act to provide for the relief of indigent soldiers, sailors and marines and the families of those deceased.'

The said chapter was thoroughly revised by Assembly bill No. 232 of the present year, which became a law while the Legislature was in session, and is now chapter 261 of the Laws of 1888. All the provisions of this bill are covered by said act more carefully and thoroughly than is proposed by this bill.

Senate bill, not printed, to authorize the Board of Claims to hear, audit and determine the claim of Chester Ray against the State.

The evident intention of this bill was to waive the short statute of limitations in the general act providing that the claim must be filed within two years after the same accrued. But this bill does not so expressly state.

A portion of the claim is for extra work done and materials furnished upon the Champlain canal. The Constitution provides that no extra compensation shall be made to any contractor for work or materials on any canals.[8] Before this bill becomes a law it should be made clearly to appear that none of its provisions are unconstitutional.

Assembly bill No. 530, conferring jurisdiction upon the Board of Claims to hear the claim of William Kowalski against the State.

Assembly bill No. 176, conferring jurisdiction upon the Board of Claims to hear the claim of John I. Birge, attorney, against the State, and to make an award thereon.

The evident intent of these bills, in each case, was not to confer jurisdiction upon the board of claims, as such jurisdiction already exists, but to waive the statute of limitations as to the time within which the claim must be filed. If the former is the real object, the bills are unnecessary. If the latter is the real object, these bills do not assume to accomplish such object, and would be ineffectual therefor.

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[8] Const. 1846, art. 7, § 3, am. 1874, 1882.

Senate bill No. 348, to prohibit the use of pound nets and purse nets in the Hudson river, between March fifteenth and June first in each year.

While the main purposes of this bill are probably meritorious, the provision in the third section for the criminal commitment of a defendant for failure to pay a civil judgment is unwise, and inconsistent with the general policy of the law.

The provisions of the bill in this respect are radically different from the ordinary execution against the person for the enforcement of a civil judgment.

Assembly bill No. 1093, for the more effectual protection of fish in the waters of Lake Ontario, along the northern part of Cayuga county.

Section 4 of this bill contains provisions similar to those in the general fish and game law, declaring contraband and authorizing the destruction by any person, without a judicial proceeding, of certain fishing implements found in the specified waters.

Mr. Justice Williams, of the Supreme Court, in the case of Lawton v. Steele, tried before him at the Jefferson circuit, and decided May 22, 1888, has held such provisions of the general law unconstitutional, and judgment was rendered in said action against the defendant, a State Game and Fish Protector, for the damages occasioned by his destruction of such property within forbidden waters without a judicial proceeding. In the course of his manuscript opinion, Justice Williams says:

'The statute expressly provides and declares the nets to be public nuisances, and, therefore, authorizes and directs their destruction. It will not do to say the Legislature has the power arbitrarily to declare property a 'public nuisance,' and authorize its summary seizure and destruction. Such a doctrine would permit the Legislature to violate every private right of property, and the enjoyment thereof guaranteed by the Constitution. Nor do I think the mere fact that the property is used in the commission of crime entitles the Legislature to declare it a 'public nuisance,' and authorize its summary destruction. The Legislature cannot declare that property to be a public nuisance which is clearly not such, and for the immediate destruction of which there is no necessity whatever. Fishing nets are not and cannot be considered in and of themselves 'public nuisances.' It is only the illegal use made of them that disturbs the public or interferes with its rights. There can be no immediate necessity of requiring these nets, even if they are being illegally used, to be summarily destroyed. The Legislature might, just as safely to the public, have provided further seizure and detention until it should be judicially determined that they were being used in violation of the law, and that they should be ordered destroyed, before their destruction should take place as to make this provision for summary destruction. This would not be true of property which the public health required to be destroyed, or the public safety, from fire or pestilence or some other things, clearly within the police 'power' of the State. I am clearly of the opinion the Legislature exceeded its powers, under the Constitution, in these provisions of the acts in question, and in these respects the acts are invalid.'[t]

It would certainly be unwise to add these provisions to a new law, while such provisions are being held unconstitutional by the trial courts. To do so would merely result in misleading persons into following the apparent letter of the law to their own damage, after discovering that the law is held void.

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[t] See Lawton v. Steele, 51 Hun, 643, 6 N. Y. Supp. 15, aff'd in 119 N. Y. 226, 152 U. S. 133, reversing the special term, and sustaining the act.

Senate bill No. 532, to amend the charter of the city of Rochester.

Numerous amendments are proposed by this bill, many of which are undoubtedly meritorious and necessary, but one of the proposed amendments involves an objection of so serious a nature that I cannot allow the bill to become a law.

The proposed amendment to section 218 would exempt the city from all liability for injury resulting from defective sidewalks, unless the city shall first have notified the adjoining owner to repair the same, and shall thereafter have received actual notice of such defect after the time has elapsed which is allowed to the owner for repairing the walk. This amendment is incongruous, and would practically defeat any action for such injury.

Assembly bill No. 258, to amend sections 1309 and 772 of the Code of Civil Procedure.

The amendment proposed to section 1309 appears to be desirable, but the amendment proposed to section 772 is very obscurely worded, and is objectionable in substance.

Senate bill No. 305, to amend sections 841 and 1582 of the Code of Civil Procedure.

The object of this bill is to enable parties interested to withdraw from the county treasurer's hands funds which have been deposited with him for the benefit of unknown owners in partition actions, after the expiration of twenty years from the time of such deposit, without any discovery of the existence of such owners. While it is probable that the courts now have the power to order such distribution upon such proof, yet there is no objection to making such power clearly appear in the statute. The phraseology of the proposed amendments, however, and in some respects their substance, are capable of material improvement, and I am satisfied that it is better to wait until the next session of the Legislature for such improvement to be made.

Senate bill, not printed, to release to Caroline E. Pierce certain lands belonging to the State.

The lands specified in this bill were purchased by the State upon a tax sale. The parties interested failed to redeem the same within the time allowed by law. The object of this bill is to relieve from such omission. The Comptroller strenuously objects to this bill upon the ground that it will open the door to an endless succession of similar claims, most of which will be without real merit. The ground urged by the Comptroller seems to be conclusive.

Senate bill No. 410, to amend the charter of the Franklin Loan and Trust Company of New York.

Senate bill No. 523, to amend the charter of the American Mortgage and Trust Company in the city of New York.

These two bills each propose amendments to charters which were granted many years ago. The Superintendent of the Banking Department to whom the bills have been referred strenuously objects to these bills becoming laws. In deference to his judgment I feel constrained to decline to approve them.

Senate bill No. 287, entitled 'An act for the relief of Robert Wilkinson, Philip Schuh and James Cox.'

Upon the recommendation of the Attorney-General, I approved a bill last year (Chapter 365, Laws of 1887), authorizing the Attorney-General to discharge a certain judgment in favor of the State against the parties named in this bill, upon the payment by them to the State of five hundred dollars and the costs taxed in said judgment. This bill proposes to authorize the Attorney-General to cancel the said judgment without any payment whatever. The Attorney-General reports to me that he knows of no reason why this bill should become a law, and no reason therefor otherwise appearing to me, I decline to approve it.

Assembly bill No. 936, to amend chapter 479 of the Laws of 1887, relating to pool-selling upon race tracks.

The object of this bill is to exempt from the tax payable to the Comptroller by racing associations, such associations as can prove to the Comptroller that no pool-selling, book-making or gambling has taken place upon the grounds of said association. The Comptroller objects to being made a judicial tribunal for the investigation of the facts in such cases, and I do not think he ought to be burdened with such unusual duties. Moreover, this bill is also defective in other important respects. A less objectionable method might have been adopted for accomplishing the object of this bill.

Assembly bill No. 461, authorizing the Supreme Court to appoint a guardian of a child one of whose parents is insane and the other unfit to have the care and custody of the child.

The Supreme Court already has all the power proposed to be conferred upon said court by this bill. The guardianship of all children is primarily in the State, and not in the parents. Such guardianship is allowed to the parents when no good reason exists for depriving the parents thereof. Whenever such reason exists, the Supreme Court may remove the parents from their natural and presumptive right to the care and custody of their own children, and may appoint a guardian to be selected by the court in place of the parents. Such I understand to be the settled law in this and other States, and so I am advised by several eminent counsel without dissent. This bill is, therefore, wholly unnecessary.

Assembly bill No. 758, to amend section 145 of the Code of Civil Procedure relating to jail liberties.

As this section now stands, the jail liberties for the county of Onondaga are the whole of the city of Syracuse. The framer of this bill seems to labor under the misapprehension that every time the boundaries of the city of Syracuse are changed it will be necessary to amend this section. The word 'whole' would seem to include whatever new territory may be taken into the city limits.

Senate bill No. 160, to amend section 1242 of the Code of Civil Procedure relating to the sale of real property.

This bill would compel the court in foreclosure and partition actions to appoint a referee to sell, who may be agreed upon by all the parties who appear in the action. It should be borne in mind that, in such actions, many persons having important interests frequently do not appear, and in such cases the courts should be allowed to retain their present discretion in selecting a referee.

Senate bill No. 261, to amend section 438 of the Penal Code relating to false labels.

Senate bill No. 53, to amend section 364 of the Penal Code relating to trade-marks.

While these bills both appear to be meritorious in their main objects, they are defectively drafted in repeating the head-notes added to the several sections by the publishers of the Code, and which are no proper part of the statute. The phraseology of one, at least, of the proposed amendments seems capable of improvement. While these defects are not fundamental, yet I think the amendments are not of such immediate necessity that serious injury will result if their enactment is delayed until the next session of the Legislature, when they can be presented in better form.

Senate bill No. 434, to prevent deception in the sale of ice for domestic purposes.

Senate bill No. 250, to prohibit poor officers from giving orders upon places where liquors are sold.

Assembly bill No. 32, for the better protection of homing and fancy pigeons.

These bills belong in the Penal Code, into which they should have been incorporated by proper amendments thereto.

The chief object of the enactment of the Penal Code will be defeated, if additional crimes applying equally throughout the State, and not incidental to or involved in statutes embracing other subjects, are to be created by independent enactments scattered through the various volumes of the session laws. I make no objection to these bills upon their merits. But it seems necessary to call attention to the propriety of keeping all enactment of new crimes, so far as practicable, in the Penal Code, by disapproving bills, otherwise meritorious, for this reason. The gain in adhering to this system of amending the Penal Code, whenever practicable, will, I am sure, be greater than any loss to the public occasioned by the postponement of these bills to another session of the Legislature.

Senate bill No. 333, to prohibit the selling or giving away of cigarettes, cigars or tobacco in any of its forms to minors under the age of sixteen years.

I heartily approve of the main purposes sought to be accomplished by this bill. But coupled with the meritorious provisions of the bill are several unnecessary and very unwise features.

1. The prohibited offenses are made misdemeanors, which is very proper, and with this the bill should have stopped. But the bill proceeds further in the third section to provide that the parent or guardian of any such minor may bring

an action against the offender so selling or giving away, and recover for the benefit of such minor the sum of twenty-five dollars for each offense. Where a crime is committed by the combined act of two equally guilty parties, it is sometimes wise to exempt one of the parties from punishment, but neither party should ever be rewarded for his share in the enterprise. Upon the principle of this bill, the very act creating and prohibiting the crime encourages and tempts one of the parties to engage in committing the very crime prohibited. It is apparent that under this bill many parents, especially in the large cities, would have their children purchase tobacco in some one of its forms for the very purpose of recovering the penalty.

2. There is another still more serious objection to this bill in its present form. The responsibility of knowing whether the minor is under or over sixteen years of age is thrown wholly upon the seller. The language of the bill is absolute; 'no person shall sell, give or furnish any cigarette, cigar or tobacco in any of its forms to a minor under the age of sixteen years.' The bill should, at least, have provided that 'no person shall *knowingly or willfully* sell to a person *whom he has reasonable cause to believe* is under sixteen years of age.'

In preparing a bill of this nature, the draughtsman should have in mind all its possible bearings, in addition to the one purpose he is aiming at. It should be remembered that many otherwise innocent acts would, by this bill, for the first time be made crimes. It may be wise to make a crime, as this bill would, out of the transaction of sending a child under sixteen to an ordinary grocery to buy, either separately or among other articles, a paper of tobacco or some snuff, but such transactions have not ordinarily been considered criminal, and when for the first time made crimes, it should be by much more carefully guarded language than is contained in this bill.

3. The meritorious provisions of this bill should have

been incorporated, by proper amendment, into the Penal Code, for the reasons above stated in my memorandum disapproving of Senate bills Nos. 53, 261 and 732 upon this ground alone.

Senate bill No. 239, to improve Greenpoint avenue in Long Island city.

This bill is open to two objections:

1. It is mandatory. Some proper local authority, or some board appointed by the local authorities rather than the Legislature, should decide whether local improvements in a city are needed or desired by the residents of the city. By this bill the Legislature expressly directs that the proposed improvement shall be made without giving either the local authorities or the citizens any discretion in that respect.

2. The board of commissioners are appointed directly by the Legislature. Such local boards should, as a general rule, be selected either by the citizens themselves, or by some local official or officials personally acquainted with the needs of the situation and with the appointees selected.[u]

Assembly bill No. 1082, to provide for the construction of drains and sewers in the Twenty-sixth and adjoining wards in the city of Brooklyn.

This bill is mandatory upon the commissioner of the department of city works, expressly directing him to perform the proposed work. The Legislature has done its whole duty in the premises when it merely authorizes the local authorities to perform such work in their discretion. When once the local authorities are given such power, they ought to be more competent than the Legislature, to pass upon the propriety or necessity of the proposed work.

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[u] Const. 1846, art. 10, § 2.

Senate bill No. 474, to extend and improve Manhattan avenue in the city of Brooklyn.

Defectively drafted. The repealing clause in section 8 of the bill is much broader than was intended by the framer of the measure, and might occasion serious inconvenience in the adjustment of other streets throughout the city.

Senate bill No. 541, for the relief of James A. Monaghan.

Defectively drafted. As originally introduced the authority to examine into this claim was given to the Comptroller. Afterward an attempt was made by amendment to substitute the board of estimate and apportionment for the Comptroller throughout the bill, but, by evident accident or mistake, such change was made in only a portion of the bill, thus creating an inconsistency which would seriously injure the effectiveness of the bill.

This bill is opposed by the local authorities of New York city upon the above and other grounds.

Assembly bill No. 921, to extend the distribution of water through the city of New York, and to lay the necessary mains and erect the necessary structures to connect the old and new aqueduct and reservoir, and to deliver water at higher elevations.

In addition to other objections which may exist to this bill, it should proceed by amendment to the Consolidation act, rather than as an independent measure.

Assembly bill No. 1048, to amend the New York City Consolidation Act relating to police and fire commissioners.

This bill is strongly opposed by the mayor and all of the local authorities of New York except those directly affected by the bill. The present limitation upon police and fire commissioners which this bill proposes to remove, has existed for a long number of years. In view of the strenuous opposition of the local authorities, who are likely to understand the effect of such a measure better than I can, I do not feel disposed to overrule their judgment, but think I should defer thereto.

I have received from Mayor Hewitt an able letter discussing the bill in all its phases, and the objections which he urges so forcibly, constrain me not to approve the measure.

My attention is called to-day for the first time to a defect in the certification of the bill. It is not certified by the speaker of the Assembly as having passed that body, as required by law. It is now too late for this defect to be remedied.

Assembly bill No. 967, relative to the maintenance, improvement and government of the New York and Brooklyn bridge.

The points presented by Mr. Delancy Nicoll, in his able argument before me in opposition to this bill, raised grave doubts in my mind as to the wisdom and propriety of the measure in some of its details. In the limited time at my disposal I have not become convinced that this bill should receive my approval. No great public interest can seriously suffer if the bridge shall remain under its present management until next winter, when a bill free from defects can be carefully prepared and passed early in the session.

Senate bill No. 73, to incorporate the Chinese Society of New York.

Unnecessary special legislation. All the principal objects of this bill can be accomplished under existing general laws.

Each of the following bills is opposed by the authorities of New York city. Owing to the limited time at my disposal, I have concluded, without special examination of such bills, to defer to the judgment of the local authorities.

Assembly bill No. 764, to establish an additional evening high school for males in the Twenty-second ward of New York City.

Assembly bill No. 520, to establish an additional evening high school for males in the Nineteenth ward of New York City.

Assembly bill No. 766, imposing a tax upon the Municipal Loan Company for the privilege of organization.

Assembly bill No. 962, to amend act for erection of building for criminal courts in New York City.

Assembly bill No. 773, authorizing discharge of taxes on certain lots in the Twelfth ward of New York City.

Senate bill No. 278, amending section 824 of the New York City Consolidation Act, relative to the Ophthalmic Institute.

Assembly bill No. 747, for the relief of George Vogel, of New York City.

Assembly bill No. 416, amending section 899 of the New York City Consolidation Act, relating to assessments for local improvements.

Assembly bill No. 1013, relating to election notices in New York City.

Assembly bill No. 334, amending section 824 of the New York City Consolidation Act, relative to the Montefiore Home.

Assembly bill No. 494, amending section 690 of the New York City Consolidation Act relative to park police.

Each of the following bills is opposed by the authorities of the city of Brooklyn. Owing to the limited time at my disposal, I have concluded, without special examination of such bills, to defer to the judgment of the local authorities.

Senate bill, not printed, to pension Abraham Dalley by Kings County and Brooklyn.

Senate bill, not printed, relative to assessors in Brooklyn.

Senate bill No. 473, to open and improve certain streets in Brooklyn.

Assembly bill No. 567, for lighting streets in the Twenty-sixth ward of Brooklyn.

Assembly bill No. 755, relative to Coroner's Clerk in Kings County.

Assembly bill No. 917, for repavement of portions of Johnson, Grand and Washington avenues, in Brooklyn."

Such consideration, in the limited time at my disposal, as I have been able to give the following bills has not convinced me that I should approve of them, and I have, therefore, allowed them to expire without action.

Assembly bill No. 647, amending section 259 of Code of Civil Procedure.

Assembly bill No. 329, amending section 69 of Code of Criminal Procedure.

Assembly bill No. 814, relative to ferriage fees across Great South Bay.

Assembly bill No. 493, amending charter of Edgewater, changing boundaries.

Assembly bill No. 919, amending charter of Buffalo, relative to school department.

Senate bill, not printed, authorizing treasurer of Buffalo to hold assessment-roll for paving Carroll street.

Senate bill No. 500, authorizing Board of Claims to hear claim of Mary K. Boyd and others.

Senate bill No. 167, amending act relative to railroad town bonds in Oneida and other counties.

Senate bill, not printed, Buffalo to Niagara Falls Boulevard.

Assembly bill, not printed, authorizing town of Lorraine to borrow money for building vault.

Assembly bill No. 264, to authorize Board of Claims to hear claim of John F. McGowan.

Assembly bill No. 566, authorizing boards of supervisors to increase number of school commissioners.

Assembly bill No. 353, amending general village act relative to Superintendent of Buildings.

Senate bill No. 129, to legalize official acts of Justices of the Peace.

Senate bill No. 412, to amend section 834 of the Code of Civil Procedure relating to evidence of physicians.

Senate bill No. 86, to amend act relating to legislative employes.

Assembly bill No. 1156, relating to the U. S. Harvey Way and Construction Company.

Assembly bill No. 857, for completion of reservoir in Oneida county.

Assembly bill No. 994, to amend general village act.

Assembly bill No. 928, to amend section 681 of the Code of Criminal Procedure.

Assembly bill No. 421, increasing compensation of Boards of Supervisors.

Assembly bill No. 236, to amend Albany charter.

Assembly bill No. 437, for adjusting accounts between the State and the several counties.

Assembly bill No. 497, bridges and highways over tidal streams.

Assembly bill No. 668, relating to water-works companies.

Senate bill No. 168, to equalize taxation of corporate franchises.

EXCISE LEGISLATION.

In the Senate, the Governor's communication relating to excise (*ante,* p. 509,) was referred to the committee on general laws. On the 10th of May the committee presented the following report:

"The committee on general laws, to which was referred the message of the Governor, dated March 16, 1888, relative to the revision and amendment of the excise laws of the State, respectfully report thereon as follows:

The people of the State will hear with satisfaction of an awakening interest, on the part of the Executive, in this great question. The importance of legislation amendatory of the present excise laws restraining and controlling, so far as legislative control can reach the evils incident to the sale of liquors, has been often impressed by the legislative branch of the government upon the Executive, and the rule has been for many years an unfavorable response.

During the incumbency of the present Executive, repeated efforts have been made by the Legislature in response to a great public sentiment, not confined to any one political party, demanding further legislative restraint of the liquor traffic by increased taxation, and the imposition of additional safeguards for the protection of social order, but in every instance the Executive has vetoed every measure responsive to these demands of the people.

Your committee cannot avoid the conviction that in such official hostility to legislation of this character, and such bold defiance of the will of the people on the part of the Executive upon this question, the Governor has yielded, perhaps unwillingly, to that powerful and controlling influence in his own party which is unalterably opposed to every species of temperance legislation.

Only such predominance of these dangerous and hostile influences in the Democratic party could have commanded and compelled the veto by the present Executive of the bills passed by Republican legislators to protect the attendants and occupants of the insane asylums of the State from the influences of the sale of liquor in their immediate neighborhood, to prohibit the sale of liquor in the Capitol and other public buildings of the State, the bill known as the Crosby high license bill, and the Vedder liquor tax bill. All of these measures were demanded by a majority of the people of the State of all political parties, and the refusal of the executive approval has been a cause of disappointment to many good citizens of all parties.

The recommendations contained in this message, coming as they do from an Executive whose every official act has, on questions of this character, shown his complete subservience to the liquor interest which directs the policy of the Democratic party in this State, may well be viewed with suspicion by the representatives of the people.

No revisory commission would be appointed by him, nor would any bill appointing such commission receive his approval whose labors would not be likely to result in the relaxation of the restraints which the people have been able to throw around the traffic by former legislative interference. On the contrary, it is more than probable that the motives which inspired this message were larger liberty and license in the sale of all intoxicating liquors, the destruction of the sacredness of the Sabbath by giving the right to sell liquors on Sunday. Every expression in the message carefully excludes any recommendation of such revision or amendment of the excise law as would make it more effective. On the contrary, the message suggests that the restraints and regulations imposed in former years are now applicable and should be removed.

Your committee submit that the laws relative to excise now on the statute books have been settled and explained by many judicial decisions, and are now well understood. There is not so much need of codification of the law on this subject, which consists of a very few statutes, as there is of its amendment by the imposition of increased taxation and reasonable restraint of the traffic as demanded by the people. This object is not likely to be accomplished with the consent or assistance of the present Executive.

Your committee are therefore of opinion that it is inexpedient at this time to act on the recommendations of the Governor, and it only remains for the representatives of the people to remit this great question to the judgment of the people themselves. They will decide whether reasonable taxation and wholesome restraint of this traffic shall be further delayed or entirely prevented by influences which seem to have acquired the complete domination of the Democratic organization in this State."

A motion to re-commit the report to the Committee was defeated by a vote of 13 to 16. On a motion to strike out the following, " Your committee are, therefore, of opinion that it is inexpedient at this time to act on the recommendation of the Governor," the vote was a tie, 15 to 15, but the tie was dissolved by the Lieutenant-Governor, who voted in the affirmative.

By chapter 522, approved June 7, a commission composed of seven members was appointed to "revise, simplify, arrange and consolidate all the statutes of the State of New York, in any way relating to the disposition, use or sale of ale, wine, beer, and intoxicating liquors, which may be in force at the time such commissioners shall make their final report." The commission was required to present its report with a bill on or before the 10th day of January, 1889. On the 10th of January, the commission presented its report, with a bill embodying its recommendations. A new excise law was passed in 1892, chapter 401.

The saving clause in this act was sustained in People v. Maxwell (1894), 83 Hun 157.

§ 24, licenses (Am. 1893, chap. 481) was held unconstitutional in People *ex rel.* Decker v. Waters (1893), 4 Misc. 1.

EXTRAORDINARY SESSION.

July 7. Governor Hill issued a proclamation convening the Legislature in extraordinary session on the 17th inst.

July 17. The Legislature met in extraordinary session pursuant to the Governor's proclamation. The Governor transmitted to the Legislature the following

MESSAGE.

"EXECUTIVE CHAMBER,
ALBANY, *July* 17, 1888.

"To the Legislature:

Pursuant to the power vested in me by Section 4 of Article IV of the Constitution, you have been convened in Extraordinary Session.

The first subject recommended for your consideration is the proper employment of convicts in the penal institutions of the State and the making of whatever appropriation may be necessary to prevent the prisoners remaining in idleness. [See note 1.]

I have received from the Superintendent of State Prisons a communication relating to the condition of the prisons, a copy of which is herewith transmitted for your information.

Should I conclude it necessary, I shall hereafter during the Extraordinary Session recommend other subjects for your consideration.

DAVID B. HILL."

The following is the communication from the Superintendent of State Prisons:

STATE OF NEW YORK:

OFFICE OF THE SUPERINTENDENT OF STATE PRISONS,
ALBANY, *July* 6, 1888.

The Honorable DAVID B. HILL, Governor:

SIR.—The present condition in the State prisons and the clear prospect of yet more urgent necessities at an early date, constrain me to advise you of the facts and to point out the inevitable and deplorable consequences of persistent neglect to provide sufficient money to keep the prisoners at work.

The situation is one which the Superintendent and other prison officials are not in any way responsible for, and it is one for which they are not willing to be accountable, either to the people of the State or the unfortunate inmates of the prisons. The condition is not unexpected; it does not arise from unforeseen causes or from any disaster. It is the direct and anticipated result of legislative neglect. Admonished by the experiences of the past administrations of the prisons, the Superintendent in the last annual report, appealed most earnestly to the Legislature to spare him the repetition of such experiences this year; and stated clearly then, as afterward in special communications, the needs of the prisons and the results that failure to provide for those needs would produce. The Superintendent regrets that his appeals were made in vain; men are now idle in the prisons because there is no money with which to provide them employment.

An emergency of grave proportions exists, which is unprecedented. The prison officials are embarrassed and perplexed; the problem is not merely how to employ the prisoners at labor, but how to preserve their very lives; it is not purely a question of how to make the prisons self-supporting, but how to provide for a proper mode of living for the prisoners, preserve their health and to maintain among them a fair degree of *morale.* During the late session of the Legislature the renewed and urgent solicitations of the Superintendent for the requisite appropriations of money to carry on the prisons were so slightly heeded that insufficient sums of money were voted and the operations of the prisons were greatly embarrassed and were conducted in a halting way with inconvenience and under great and needless disadvantages. The Legislature appropriated but $750,000 to provide for the employment of 2,600 men, when it was in possession of the knowledge that during the previous year the preceding Legislature had furnished $1,300,000 for the employment of an average number of 1,300 men, then engaged on the prison industries. The average number of men to be employed had increased one hundred per cent., but the appropriation of money was reduced almost thirty-five per cent. This appropriation is practically gone; it has been prudently used, but it is exhausted before the half year is completed. The reports made by the Wardens of the several prisons emphasize what is herein said and forecast the immediate future of each prison. The Warden of Sing Sing reports that 350 men will become idle on the 20th of July, and 650 more early in August. The Warden of Auburn reports that he will have to lock up 550 men on the 15th of July, and 150 more early in August. At Clinton Prison only a part of the available force are now employed, and the Warden reports that they will be out of work by the first of August. These facts are submitted to show that the Superintendent and his associates are powerless; they have no possible resources with which to meet the exigency. Unless some relief is afforded, the great body of men in the State prisons must be locked in their cells for the period of nearly six months. It is not humane. The prison officials who have come in contact with the men during the recent times of enforced idleness remonstrate with pathetic earnestness against it, and tell how injurious such idleness and incarceration are.

You are aware that when the Legislature in 1884 abolished the contract system of labor in the State prisons, they provided no substitute therefor. It was then decided by the Attorney-General that the State account plan was the only legal one which was available, in the absence of additional legislation, and my predecessor accordingly proceeded to operate that system, and I have necessarily continued it. I could do nothing else under the law.

I am not, however, committed to the State account system of labor or any other particular system, but as an official I am only desirous of doing my duty, and am ready to operate whatever system of labor the Legislature may see fit to adopt. At present I have no discretion except to continue the State account system until some other plan is devised by the Legislature.

I am also aware that you have during the past four years, in each of your annual messages urged the Legislature to adopt a new or permanent system for the employment of prison labor, but that no heed has been paid to your recommendations.

But if the Legislature fails to provide an acceptable substitute for the present system, it must provide sufficient moneys to operate the present system, or the prisoners must necessarily remain idle. It is not believed that the people or the Legislature really desire or intend that the prisoners should remain in idleness, locked up in their cells, with all the evils incident to such a condition. But such a result must speedily follow, unless proper appropriations shall be made.

It should be borne in mind that appropriations for the prisons do not represent what the prisons are costing, nor are the amounts necessarily raised from the taxpayers, but frequent appropriations are required by reason of the methods incident to our State financial system. Whenever a million dollars, or any other sum, has once been raised for the purpose of carrying on the industries in our prisons, the amount is drawn from time to time as occasion requires, and used in purchasing materials, etc., but when the materials are once manufactured and sold, the proceeds of the sale of such manufactured materials must be paid back into the State Treasury, and can only be drawn therefrom to be used again in the purchase of materials by an act of the Legislature making a specific appropriation of such moneys. Thus virtually the same moneys may be used over and over again. Hence the necessity of frequent appropriations or the desirability of large ones to meet emergencies when the Legislature is not in session. This has been repeatedly explained, but there are many in the Legislature and out of it who do not seem to understand it.

It should further be stated that there has been paid into the State Treasury from the commencement of the present fiscal year, to-wit: October 1st, 1887, to June 30th, 1888, by the Wardens of the various prisons, on account of the manufacturing industries carried on therein, the sum of $1,309,783.07, as follows:

Sing Sing deposits	$418,499 85
Auburn "	532,805 86
Clinton "	358,477 36
Total	$1,309,783 07

The number of men to which the present industries give employment is shown in the following table:

Prisons.	Industries.	Number of Convicts.	
Sing Sing	Shoe	475	
" "	Stove	450	
" "	Laundry	200	
			1,125
Auburn	Boot and shoe	410	
"	Hollow ware	186	
"	Broom	50	
"	Horse collar	59	
			705
Clinton	Clothing		534
Total			2,364

To employ the prisoners now assigned to the several industries until February 1st, 1889, the Wardens estimate that they will require the following sums of money:

Sing Sing Prison	$480,000 00
Auburn "	440,000 00
Clinton "	280,000 00
Total	$1,200,000 00

The estimate is made until February 1st next, because, although the Legislature meets on the first Tuesday of

January next, little is usually accomplished during the first month, and the matter of an appropriation for the State prisons might not be reached, and in the meantime the prisoners should not be kept in idleness nor the industries stopped, thereby occasioning financial loss and great embarrassment in other respects.

I realize that it is claimed that the industries carried on in our State prisons conflict to some extent with outside industries. I fully appreciate the difficulties which surround any system of labor that may be proposed for our State prisons, and would personally desire to see all such competition abolished, or at least lessened. But this competition seems to be incident in some degree to any system of labor that can successfully be carried on in our prisons. If any system can be devised which will abolish or lessen the evils now complained of, I shall cordially welcome it. I do not make the laws, but am obliged to enforce them as I find them.

I do not understand why the Legislature so readily granted all the appropriations desired by my predecessor, and now hesitates to grant a sufficient sum to keep the prisoners employed under my administration. The general situation is the same now as it has existed for the past few years.

I ought also to state that near the close of the last session of the Legislature a bill appropriating a million dollars for the continuance of work in the prisons passed the Senate, but failed in the Assembly on the last day — lacking, however, but a few votes. It is believed that the Legislature, upon a more careful consideration of the subject, will not hesitate to grant the necessary appropriations.

The foregoing are all the facts bearing upon the subject, and the question arises whether the emergency is not sufficient to convince you of the propriety of calling an extra session of the Legislature for further consideration of this matter.

In the endeavor to discharge my whole duty to the people of the State, and to the prisoners under my charge in this extraordinary juncture of our prison administration, I respectfully submit these facts for your further consideration.

I have the honor to be,
Your most obedient servant,
AUSTIN LATHROP,
Superintendent of State Prisons.

July 18. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *July* 18, 1888.

"1. I have received a communication from the Supervising Commissioners of the Capitol, consisting of Lieutenant-Governor Jones, Speaker Cole, Senator Low, President *pro tem.* of the Senate, and Commissioner Perry (organized under the provisions of Chapter 578 of the Laws of 1888), which communication is hereto annexed, wherein they ask a small additional appropriation to make certain changes in the plans for the completion of the State Library apartments in the Capitol, and request me to present the matter to the Legislature now in session. Pursuant to their request the subject is hereby recommended for your consideration.[24]

2. A Committee from the Central Labor Union of New York has called my attention to certain alleged defects in what are known as the "Conspiracy Laws" of our State. It is claimed that they are not sufficiently explicit in defining what acts are lawfully permissible thereunder. It is clear that such laws should be concise and explicit and easily understood, so that they may be intelligently obeyed, and not violated inadvertently or unintentionally.

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[24] Chapter 585, approved July 28, appropriated $15,500 for improvements to be made in the State Library apartments.

For the purpose of affording an opportunity to correct any defects that may be deemed to exist in such laws, I hereby recommend the subject for your careful consideration.

DAVID B. HILL."

July 19. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *July* 18, 1888.

"In my communication to the Legislature of July 17, 1888, I recommended for your consideration "the proper employment of convicts in the penal institutions of the State." This language is broad, and was intended to cover all institutions where prisoners are confined for crime. I am informed that it is claimed by some members of your honorable body that the words "penal institutions of the State" only include the State prisons. I do not think that the words will fairly bear so narrow a construction, but, in order to remove all question as to the power of the Legislature at this session to dispose of the whole subject, I hereby recommend for your consideration at the present Extraordinary Session the proper employment of the convicts in the State prisons, penitentiaries, reformatories, houses of refuge, industrial schools, jails and other institutions where persons convicted of crime are confined for punishment.

It is desirable that the whole subject of convict labor in the State should be disposed of in one clear and comprehensive bill. [See note 1.]

DAVID B. HILL."

July 19. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *July* 19, 1888.

"I recommend for your consideration at the present Extraordinary Session the following subjects:

1. An enumeration of the inhabitants of this State, as required by the Constitution. [See note 14.]

2. A measure providing for a Constitutional Convention in pursuance to the Constitution and in obedience to the will of the people expressed in 1886.[25]

DAVID B. HILL."

July 19. To the Legislature:

" EXECUTIVE CHAMBER,
ALBANY, *July* 19, 1888.

" By Chapter 490 of the Laws of 1883 the Legislature provided for the construction of a new aqueduct for the city of New York, and designated the Mayor, the Comptroller, and the Commissioner of Public Works of said city, and three citizens named in the bill, as a Board of Aqueduct Commissioners to have charge of such construction.

The act of 1883 was amended by Chapter 337 of the Laws of 1886, whereby the Mayor and the Comptroller were omitted as Commissioners, and three persons, to be named by the Governor, were to be appointed as additional Commissioners and confirmed by the Senate; and thereafter three persons were so appointed and confirmed, and are serving at the present time.

The present Aqueduct Commission, therefore, consists of one official of the city, to-wit: the Commissioner of Public Works, who is a member *ex-officio*, and six citizens — three named in the act of 1883, and three appointed by the Governor and confirmed by the Senate under the act of 1886.

I am advised that it has appeared, upon the investigation now pending in regard to the Aqueduct and other matters in the city of New York, that the Board, as now constituted, has not been a harmonious body, but that for some time there has existed much discord and a lack of proper co-operation among its members, whereby public interests have suffered in some degree.

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[25] See 1887, note *ante*, p. 470.

I am also informed that two or more of the Commissioners have had business relations with some of the contractors or sub-contractors, thereby committing an impropriety, even if nothing more, subjecting them to just criticism, and necessarily embarrassing them in the proper discharge of their duties.

It is claimed that other matters have been shown affecting the letting of contracts and the performance thereof to the detriment of the interests of the city. Of all these matters, however, I have no accurate or official knowledge, as the investigation, which is *ex parte,* is still pending, and no report thereof has yet been presented; and, under such circumstances, it would be manifestly improper for me to express an opinion thereon, especially in view of the fact that if the charges alleged against the Commissioners are finally established they are liable to removal by me, and proceedings for such purpose would unquestionably be instituted.

The suggestion which I desire to make concerning the Aqueduct Commissioners is not, therefore, based upon any assumption of the truth of the allegations made against them, but is founded upon an inherent defect or mistaken policy in the two statutes in question creating the Commission, arising out of the improper manner in which the whole Commission was created. It must be conceded that both of these statutes violated the principle of "Home Rule," which has come to be regarded as essential to the proper government of municipalities. That general principle I have usually endeavored to enforce, and whenever a departure from it has been permitted I am satisfied a mistake has been made.

The statute of 1883, approved by my predecessor, named three Commissioners in the bill itself. That was unwise.

If any other than officials were to be designated, those persons should have been selected by the local authorities, and not by the Legislature. Here the first mistake was made. The statute of 1886 continued the error, but, while not naming the three additional Commissioners in the bill, it empowered the Governor of the State to select them and the Senate to confirm them. This was likewise a mistake. The additional Commissioners should have been appointed by the Mayor of New York.

It is submitted at this time when public attention has been called to the subject, that it is wise to return to first principles, and to permit the local authorities of that city to control the further construction of the Aqueduct by their own officials or by citizen Commissioners of their own choosing, and not by Commissioners selected either by the Governor and Senate or the Legislature. This would give that city the benefit of the principle of 'Home Rule' to which it is entitled in reference to its municipal affairs, and would relieve the Legislature from further responsibility in connection with the construction of a purely local improvement; and the passage of such a measure would not of itself be any reflection upon any of the Commissioners, but a condemnation of a vicious system of legislation, unadvisedly adopted, which should not longer be sanctioned.

The repeal of the amendatory act of 1886 alone, leaving the act of 1883 untouched, would be a tacit approval of the latter act, and not furnish an adequate remedy. It would simply partially correct a mistake, and still perpetuate a wrong system of legislation.

I am advised that many of the complaints made against the Aqueduct management arise out of the actions of the old Commission created under the act of 1883, and before the reorganization in 1886. It was the original Commission that awarded the principal contracts alleged to be disadvantageous to New York City and controlled their performance during a period of about eighteen months. The fairest, best, and most advisable course is to enact a measure abolishing the present Board, and creating a new Commission, to consist of the Mayor, the Comptroller, the Commissioner of Public Works and the President of the Board of Aldermen (who should be Commissioners *ex officio*), and three citizens to be appointed by the Mayor, who should constitute the remaining Commissioners.

This is a plain and simple measure, to which no reasonable objection can be urged. It affords a prompt and effectual remedy for all of the matters now complained of against the Aqueduct Board. It casts no reflection upon the present Commissioners, nor discriminates between them, and it seeks no partisan advantage, but simply restores to the city of New York and its officials the proper control and management of an important public improvement, of which it was deprived by both of the statutes aforesaid.

Therefore, the subject of abolishing the whole of the present Board and of establishing a new one in the manner indicated is respectfully recommended for your consideration at the Extraordinary Session now being held.[26]

DAVID B. HILL."

July 20. The extraordinary session was adjourned without day.

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[26] By chapter 584, approved July 23, a new aqueduct commission was created for New York, to be composed of the mayor, comptroller, commissioner of public works, and four competent persons to be appointed by the mayor.

MEMORANDUMS ON BILLS PASSED AT THE EXTRAORDINARY SESSION.

July 23.

Memorandum filed with Senate bill, Chap. 584, amending the New York Aqueduct act. Approved.

"The essential and valuable feature of this bill is the principle of 'home rule' which it adopts and emphasizes. It recognizes the propriety of the local authorities of the city of New York being permitted to select their own officials to construct a great public work, of the control of which it was deprived by the original statute of 1883 and the amendatory act of 1886. It repudiates the vicious system — so long insisted upon by the legislature heretofore — of municipal officials being designated in bills by name or being appointed by the governor and the senate, and restores to the mayor the authority which legitimately belongs to his position as the chief executive officer of the city.

The importance of this principle cannot be over-estimated. The bill establishes a precedent which, if followed hereafter, will prove of great and lasting benefit to all municipalities.

My views upon this subject are not new. In withholding my approval from a bill passed by the legislature in 1886, which temporarily deprived the mayor of New York of the power to appoint excise commissioners, it was stated in the veto memorandum as follows:*

'What New York city needs in this matter, as well as in most other matters to be affected by legislation, is to be let alone. Special legislation in reference to its affairs should be avoided whenever possible. Bad precedents should not be created, even if good results might temporarily follow. No matter who occupies the mayor's chair, or to whatever party or faction he may belong, the rights and prerogatives of his office should be protected from encroachment by legislative interference.

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* *Ante*, p. 277.

The bill, as a whole, is a substantial compliance with my recommendation to the legislature. It does not simply repeal the act of 1886, but also virtually repeals the act of 1883 so far as it relates to the method of appointment of commissioners therein provided. It strikes at the root of the whole matter and reiterates a principle essential to the good government of municipalities. This principle the legislature has heretofore been reluctant to recognize, but its adoption at this time, no matter what circumstances induced it, is cause for congratulation.

It is true that I should have preferred that the president of the board of aldermen had been included among the officials to represent the city upon the board, he being an officer elected by the whole people, and not merely an appointee; and also that the mayor should have been left free to select the citizen commissioners without any restriction as to politics, but the legislature, in its wisdom, having thought otherwise, and the bill being in other respects precisely as recommended by me, it should not be permitted to fail because of these departures in matters of detail.

The passage of this measure under the circumstances casts no reflection upon the present commission. They are not removed *for cause,* but the whole board is reconstructed upon principle, because it was inharmoniously organized, and its construction was incongruous both under the law of 1883 and 1886, and its continued existence was a violation of the Democratic principle of 'Home Rule,' to which, under the bill, it is now proposed to return.

Neither does the bill seek nor contemplate the stoppage of the present investigation of the aqueduct management. That investigation is permitted to proceed to the fullest extent. This was understood when the bill was recommended — and it is so understood now that the bill has passed.

While the bill may be regarded as abrupt and severe in its application of a correct principle of legislation, yet it is believed to be demanded by the best interests of the people and will hereafter prove of incalculable benefit to the citizens of New York as a precedent in protecting them from further unnecessary legislative interference, and restoring to them the control of their local affairs, and hence the bill is hereby heartily approved."

August 1.

Memorandum filed with Assembly bill, Chap. 586, concerning convict labor. Approved. [See note 1.]

"The desirability of providing some proper system for the employment of convict labor, has long been recognized.

For four years in each of my annual messages I called the attention of the Legislature to the subject, but no definite action was taken, and the Legislature again adjourned its annual session in May last leaving the problem unsolved.

I convened the Legislature in extraordinary session to consider the whole subject, and the bill now before me is the result.

The bill is approved, notwithstanding it is imperfect, and subject to many objections, because it seems to be the best that is obtainable at the present time. It may well be doubted, however, whether it is adequate to meet the situation.

It abolishes the use of machinery in all the prisons, penitentiaries and other penal institutions in the State, and provides that the convicts shall only be employed in the manufacture of such articles of clothing and other necessary supplies commonly used in the public institutions in the State, supported in full or in part by the State, and requires the managers of such public institutions to procure such necessary clothing and supplies from such penal institutions.

It does not provide for any other labor. It fails to declare what shall be done with the convicts when the public institutions have been fully supplied.

This is an important feature because I am advised that in four months' time the convicts can manufacture, even at hand labor and without any machinery, enough to supply for a year all the public institutions in the State required to be supplied.

What is to be done the rest of the year?

Are the convicts thereafter to cease work and remain idle? Or are they to continue work and accumulate a vast stock for which there is no demand and which cannot be sold to any one under the law?

These are serious questions which arise under the bill, and their solution is not free from difficulty.

Under the 'Yates Bill' (so called) of last winter, other methods of employment were provided for in addition to the sole one mentioned in the present bill, and other valuable provisions were contained in it which are entirely omitted here.

It is suggested that under this bill the managers of the State Soldiers' Home will be compelled to clothe the soldiers under their charge with prison-made clothing, and there seems no escape from that conclusion. I am opposed to such a proceeding and believe that the Soldiers' Home should have been exempted from that provision of the bill. There is no occasion for placing the veterans of our State, when making provision for their care and maintenance, upon a par with paupers, lunatics, or felons.

The bill bears evidence of having been hastily prepared, and I fear must be regarded as a mere temporary expedient designed more to bridge over the present emergency than to adopt a permanent system of prison employment. The Attorney-General holds that the bill applies to local penitentiaries, and he being the law officer of the State his opinion must be respected by me.

But there are many difficulties that will arise in enforcing the provisions of the bill in respect to local institutions. The bill omits to provide any method for the disposition of what they manufacture. Are they bound to sell to the State exclusively? Can they manufacture for their own local charitable institutions?

What control has the Superintendent of State prisons,—a State officer,—over their affairs?

What disposition shall they make of their surplus goods?

What is to be done if the State declines to purchase, having already been fully supplied by its own State penal institutions?

Does the bill do anything else, so far as local institutions are concerned, except to prohibit machinery therein?

An examination of the provisions of the bill fails to answer these questions satisfactorily.

The scheme contemplated by the bill seems to be incomplete, and, I fear, practically incapable of operation, so far as local penal institutions are concerned. The bill has the appearance of having been drawn so as ostensibly to include local penal institutions while practically excluding them.

The bill should have been perfected in its details so that local penal institutions could successfully carry out its provisions.

In so far as the bill aims to protect honest labor from the unjust and improper competition of convict labor it has my earnest approval.

It should have gone further, however, and explicitly made provision for the operation of the new system in the local institutions, and left nothing in doubt or confusion as to the practical effect of the bill.

If the bill only provides for an employment which will keep the convicts at labor about one-third of the year and the rest in idleness, then it fails to meet the expectations of the people. It will also fail to meet the demands of the taxpayers who believe that the prisoners should not be kept in idleness, and that the prisons should be made self-sustaining as far as that can reasonably and properly be done, and not a burden to the people.

It should be borne in mind that all idea of the prisons or penitentiaries being self-supporting is abandoned in the scheme contemplated by this bill.

It expressly limits the products of the prisons and other penal institutions to the needs of the State for its own uses, and necessarily there must arise a large annual financial deficit greater than ever before. In many respects the bill, although defective, has much to commend it. It prevents absolute idleness for at least a part of the year. It does not restore the contract system. It prohibits the State account system, so far as selling to third parties is concerned.

But what the people, the taxpayers and the workingmen all wanted was, not a measure affording mere temporary relief, but a carefully prepared and comprehensive bill, settling the vexed question of convict labor and providing a permanent system therefor which should compel the prisoners to work at hard labor all the year round, upon industries which would not conflict at all, or the least conflict with outside labor under proper legal restrictions and regulations, and at the same time not render the prisoners a burden to the taxpayers.

These satisfactory results cannot well be realized under the present bill. It will immediately require amendment at the very next session of the Legislature, and unfortunately the whole subject will necessarily be re-opened, especially in view of the conceded fact that the bill is deficient in provisions for carrying out its intent as to local institutions. The avowed purposes of the bill, however, may be regarded as a step in the right direction. It cannot now be amended, and must be accepted or rejected as a whole.

Any reasonable measure having for its sincere purpose the prevention of unnecessary competition between prison and outside labor, no matter how strong, stringent or radical its provisions may be, provided they are at the same time consistent, explicit and effectual, would meet with my prompt approbation. My views upon this subject are not recent or spasmodic, but have long been entertained and are well known.

The Executive has no power to originate or pass measures in the Legislature. He can only suggest measures, and his duty is discharged when he has called legislative attention to any subject, and given the Legislature an opportunity for action upon it.

The alternative is presented to me of either not approving the present bill, and thereby leaving the prisons of the State wholly unprovided for, or of approving a measure which, although imperfect and crude, affords a partial and temporary relief, and I have concluded that it is my duty, under all the circumstances, to approve the bill."

1889. JANUARY 1. LEGISLATURE, ONE HUNDRED AND TWELFTH SESSION.

DAVID B. HILL, Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,
ALBANY, *January* 1, 1889.

TO THE LEGISLATURE.— In entering upon the fifth year of my service as Chief Executive of the State, and at the beginning of your one hundred and twelfth session, it seems proper that we should recall with thankfulness the material progress and continued prosperity with which as a State we have been favored. I congratulate you and the people of the State upon the gratifying condition of affairs which greets you to-day, and without further formality or unnecessary preliminaries I proceed to discharge one of the most important of the annual duties imposed upon me by the Constitution.

FINANCES.

The favorable condition of the finances of the State remains substantially unchanged. The debt has been reduced $601,650 during the past fiscal year, by the payment of $100,000 Niagara Reservation bonds, and $501,650 canal bonds.

On the 30th day of September, 1888, the total funded debt was $6,965,354.87, classified as follows:

Indian annuities (General Fund).........	$122,694.87
Canal debt	6,142,660.00
Niagara Reservation bonds	700,000.00
	$6,965,354.87
Aggregate Sinking Fund	4,076,289.39
Total debt unprovided for, but not yet due	$2,889,065.48

The tax rate for the current fiscal year is two and sixty-two one-hundredths mills ($2\frac{62}{100}$), which, on the present assessed valuation, will yield $9,089,303.86.

The amount received from notaries during the last fiscal year, arising out of their appointment, as provided under chapter 230 of the Laws of 1886, is the sum of $19,637.25.

There has been received during the same period from the "pool tax," so-called, the sum of $23,178.99, which is to be disbursed by the State Agricultural Society in the form of prizes for improving the breed of cattle, sheep and horses, at the various county fairs throughout the State, under chapter 479 of the Laws of 1887.

REFORM IN ELECTION METHODS.

The necessity of some change in our election laws, whereby the increasing corruption which has become incident to our elections may be prevented, is imperative.

It is believed that the recent Presidential election was the most corrupt of any in the history of the country, so far as the direct use of money was concerned in influencing the electors, and public sentiment is naturally awakened to the desirability of some relief. The peculiar causes which induced this immense corruption are apparent. It was adroitly proclaimed that the success of one of the great political parties would endanger certain of the manufacturing interests of the country which had theretofore been accustomed to receive the fostering aid of the government at the expense of the masses of the people; and for the avowed object of protecting their business, persons and corporations interested in securing a continuance of such favors caused vast and unusual sums of money to be raised for the purpose of debauching the electors and defeating the party supposed to be inimical to such interests.

The anxiety to subserve selfish and private advantage, rather than the general interests of the public, naturally led to the campaign being conducted upon alleged "business" principles, whereby it is asserted that electors were bought and sold like goods and chattels in the open market. It is claimed that at least $100,000 were expended in the Twentieth and Twenty-fourth Congressional districts in this State in the efforts made therein to elect Congressmen and to secure electors believed to be favorable to the policy of fostering private interests.

So successful have been recent efforts at corrupting the ballot-box that good citizens are led to doubt whether the free and unbiased sentiments of the people may not continue to be nullified through corruption whenever and as often as it appears that the interests of the people conflict with those of interested monopolists who, profligate of their moneys, are intent upon resisting all interference with their selfish and arrogant demands.

This subject is not a new one. I had the honor of saying in my annual message of 1887, as follows:*

> "It is the growing impression, founded upon much truth, that offices are too frequently sought by and bestowed upon wealthy men who obtain them by the lavish and improper use of money rather than any real merit of their own. This fact discourages men of moderate means from seeking official honors, and creates the conviction in the minds of workingmen that public positions are not within their reach."

It is clear that some change in existing laws is required to prevent or check the evils in question. It may be difficult to prevent all corruption pertaining to elections, but it would seem as though much of it can be abated. I invite the earnest co-operation of the Legislature in an intelligent and conscientious effort to devise an honest and practical measure designed to purify our elections.

In the first place, it is important to inquire what is the precise or principal abuse complained of, and to consider a proper remedy therefor. The present system of elections in this State has existed for a long period of years, and in the main has proved satisfactory. It has been tested in nearly all its details in many important contests, especially in 1884, and, having proved reasonably sufficient, there is no necessity for its being wholly overturned. There is no real demand for the hasty adoption of an entirely new or untried system. It may be safely asserted that the election laws of this State as a whole are not excelled by any in the country, and, while they may be improved in several particulars, any proposed amendments thereto should be most carefully prepared and thoughtfully considered.

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* *Ante*, p. 314.

It is evident that the improper use of money in the bribery of electors is the great evil pertaining to our elections, and one which the honest people of the State desire to have remedied. Bribery is forbidden, and adequate provision is made for the punishment thereof under existing laws, but the chief difficulty is that such laws are nowhere enforced. What is needed is some amendment preventing or making more difficult the act of bribery, and affording less opportunity for the successful consummation thereof at the polls.

It is suggested that the existing election laws be amended by providing that a reasonable distance from the polls be set aside or reserved by ropes, or barriers of some kind, behind which no one except peace officers and one elector at a time should be permitted to enter, and that all electioneering should be done outside of such reserved distance, and that each elector should be required to pass behind screens or within compartments or booths situate within such reserved boundaries, and there, alone, prepare or assort his tickets, and then proceed directly from such place to the polls without anyone accompanying him or any opportunity being afforded for discovering what ticket he votes.[1]

The value of such a provision consists not in *permitting* the elector to cast a secret ballot, but in *compelling* him to do so. Under such circumstances the elector is not so liable to be bribed, because the bribers would not be likely to pay their money for a vote when they cannot be positive which way that vote has actually been cast. The opportunities and probabilities of corruption would thereby be greatly diminished, and a pure election rendered more certain. Such a provision, plain, simple, and easily understood, would tend to prevent or at least restrict corruption at the polls, and it is difficult to conceive of any reasonable objection thereto.

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[1] **A bill for an election law was passed this year, but was vetoed; see veto message of May 13. Another bill was passed in 1890, was approved by the Governor, and became chapter 262. It was intended to promote purity and secrecy of elections, and provided for printing ballots at public expense. The act prohibited electioneering in a polling place or in any public manner within 150 feet of the polling place. The same act required voting booths in which voters were to prepare their ballots "screened from observation."**

Another decided advantage to be derived from such an innovation would be its effect in preventing employers from so successfully influencing or intimidating their employes at the polls. I am advised that at the recent election, in many places, employers or their principal foremen stood all day at the polling-place windows and handed their employes their tickets as they approached to vote, thus compelling them to vote in the presence of their employers or their foremen, and thereby effectually coercing the workmen and controlling their votes. Such a result would be impossible if the presence of outsiders near the polls could be absolutely prohibited, and every elector permitted to select and cast his own ballot substantially in secret.[2]

It is also suggested that it be provided that ballots for all elections be furnished at public expense, under suitable and proper regulations. The necessity or wisdom of this change is not entirely clear, and it may well be doubted whether of itself it will prove of much benefit or be productive of any very essential reform; but, having no special objection to it, I am disposed to recommend its adoption as an experiment fairly entitled to a reasonable trial. It is a power which is liable to great abuse, and should be carefully restricted. While ballots should be furnished for the candidates of the principal political parties, and for all other parties polling a certain fair percentage of votes at the previous election, yet any further provision compelling their furnishing should be strictly guarded. It is not believed to be desirable, nor is it just to the taxpayers, that every political adventurer who desires to run for a public office should have his ballots printed at public expense, regardless of his merits, the extent of his following, or the motives or purposes of his candidacy. A mere handful of adherents, compared with the great body of the citizens, should not be permitted to impose a self-constituted candidate upon the people at public expense, simply to gratify his personal vanity or the pretensions of a small faction.

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[2] The election law of 1890, chapter 262, provided that employes should be entitled to absent themselves from their employment for two hours for the purpose of voting during the time the polls remained open, and such employes were not for such absence to be subject to any penalty or any deduction of compensation.

The English or Australian system of voting (which is being much discussed by those who apparently know little concerning it), requires every candidate to pay his fair and just proportion of the expenses of election, including the furnishing of ballots. If the Australian system is to be departed from in this particular, and ballots are to be furnished for candidates gratuitously, it is important that the number of such candidates should be properly restricted under some appropriate regulations.

Grave objections exist to any provisions vesting the exclusive power of furnishing ballots in the State, county or city. That power should be concurrent with parties, candidates and individuals. While the State, county or city may furnish ballots, and thereby always insure a sufficient supply for the convenience of voters, and thus tend to relieve candidates from the necessity of large political assessments for such purpose, yet no good reason exists why parties, candidates or private individuals may not themselves be permitted voluntarily to furnish their own ballots in case they desire to do so. Provision should be made for the selection of ballot clerks, who should have charge of the ballots thus furnished at public expense, and these clerks should be stationed inside the reserved boundaries, behind a desk or counter, and should furnish the electors upon request a full set or sets of all the printed ballots. Electors should not, however, be obliged to ask or receive their ballots from such clerks, but should be permitted to supply themselves in advance from candidates, their friends, or in any other manner they choose, at their own residence, or elsewhere, and being thus supplied, should have the privilege of casting their ballots just as they have prepared them, without the assistance or intervention of any ballot clerks.[3]

Many unanswerable arguments can be adduced why the power or privilege of furnishing all the ballots for a county or city should not be vested exclusively in a single public official. Such a power is unprecedented in this country, is unnecessary, and dangerous in the extreme. The great value of our present election laws has consisted in the fact that powers are largely diversified, and that it is practically impossible for any single election official by his sole inadvertence, negligence, cheating or crime, to inflict any material injury or consummate any extensive fraud. But if the sole custody of all the ballots for a county should be vested in a County Clerk, and those for the city of New York in the Clerk of the Bureau of Elections, then there is placed in the hands of a single official vast opportunities for fraud and deception. His carelessness, corruption or crime in the printing or manipulation of the ballots, in the delay or withholding thereof, or in their entire loss or destruction, might virtually disfranchise the electors of a whole county or city, and control a State or Presidential election thereby. It is not believed that the right of hundreds of thousands of electors to exercise the elective franchise should be made to depend upon the honesty or carefulness of a single official.[4]

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[3] The Governor's suggestion as to ballot clerks, and their duties, was in substance embodied in the election law of 1890, chapter 262.

Neither should there be permitted any marking of the ballots by the ballot clerks by placing their initials thereon, or otherwise. Such identification is unnecessary, and virtually destroys the secrecy of the ballot, so essential for the prevention of corruption and intimidation. It substitutes in the place of an absolutely secret ballot a mere promise of secrecy on the part of two subordinate officials. Besides, it is quite clear that any such provision is in violation of the Constitution of this State.[a]

It is significant that the new election law of Massachusetts which was passed last year, but which does not go into effect until November first next, has omitted all provisions requiring the marking or identification of ballots (except in the case of illiterate electors), thus departing essentially in that respect from the English or Australian system.

For the purpose of further facilitating pure elections it is recommended that election districts throughout the State be made much smaller, and that the division of large districts be made more compulsory and a more effectual remedy provided for the prompt enforcement of such division. There are numerous election districts in the State where nearly a thousand votes are polled, thereby creating confusion, inducing crowds, inconveniencing electors and lessening the opportunities for the detection of fraud and corruption. It is obvious that if it should be provided that where any district has polled over a certain number of votes — for instance, over three hundred — at a previous election, its vote should not be counted at the next election unless the district shall be divided; such a provision would have the wholesome effect of compelling officials, political committees, or citizens generally to see that the duty of division is performed.[5]

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[4] The election law of 1890, chapter 262, provided for furnishing ballots at public expense, but also contained a provision allowing a voter to use a ballot of his own selection or preparation.

Governor Hill's suggestion as to the possible disfranchisement of voters under the operation of a law providing for official ballots to be printed and distributed by designated officers, was illustrated in the election for State senator in the 25th district in 1891. See People ex rel. Nichols v. Board of Canvassers (1891), 129 N. Y. 395. By some error, the cause of which does not appear, official ballots endorsed for certain election districts were delivered to other districts, and were used by voters at the election. It was held that the use of such ballots, so erroneously endorsed and distributed, was unlawful and that the votes attempted to be cast by means of them were void. In consequence of this error in the distribution of ballots 1,252 votes cast for Rufus T. Peck were rejected. With these ballots Mr. Peck had a majority of the votes cast in the Senate district, but by their exclusion the election resulted in the choice of John A. Nichols, who received only a minority of the votes actually cast.

[a] Const. 1846, art. 2, § 5.

Another suggestion is pertinent at this time. Our elections should be free from intimidation as well as from corruption. The evil of bribery is fast undermining our institutions and is the disgrace of the age, but the wrong of intimidation and undue influence is also becoming common and is likewise dangerous.

A new form or species of intimidation was invented and much resorted to just before the recent election in some portions of the State, which was equally as effective as corruption in improperly influencing electors. Employers of workmen in paying their men, placed the pay in envelopes called "pay envelopes," which had been furnished the employers by a political committee, and upon which were printed political mottoes, devices and arguments, intended to influence the workmen, and among other things warning them in substance that their votes for particular candidates meant loss of work, and containing implied threats, and intimating that work would be stopped and they and their children would suffer starvation and otherwise be injured unless they pursued a certain political course. These envelopes were foisted upon the workmen, who were obliged to accept them in order to receive the wages which were honestly due them, and they had the effect intended, which was to frighten workmen and deter them from voting the ticket of their choice in opposition to the wishes of their employers. The law ought not to permit employers thus to take advantage of their workmen. It is a contemptible, outrageous and unjustifiable proceeding, and I recommend that the use of any such envelopes be declared unlawful, and punished as a crime. A specific statute is necessary to reach acts of this character.[6]

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[5] The new election law, 1890, chapter 262, required a new arrangement of election districts so that a district should not contain more than 300 voters.

It is submitted to your attention whether it may not be expedient to require each candidate for a public office at a general election to file with the Secretary of State within ten days after the election a verified statement of all moneys expended by him in aid of his election during the canvass, showing somewhat in detail the purpose and nature of his disbursements, and providing a proper penalty for his failure so to do.

It might be advisable to declare that the failure of any successful candidate to file such statement should work a forfeiture of his office.[7]

Last year there was passed in the State of Massachusetts an act entitled "An act to facilitate voting by employes,'' which provided that on any day on which any State or National election occurs there should be a period of two hours after the opening of the polls when any employe in any manufacturing, mechanical or mercantile establishment in the State should have the privilege of ceasing work and going to the polls to vote, in case he is a legal voter and has made application for such leave of absence; and prohibiting any employer from having any work done by any such employe during such period of two hours.

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[6] The practice here described by Governor Hill was prohibited in an amendment to the Penal Code, section 41c contained in L. 1890, chapter 94.

[7] In 1890, by chapter 94, section 41d was added to the Penal Code requiring candidates to file statements of expenses within ten days after the election, and by another section, 41f, a candidate who failed to file such a statement forfeited his office and was also guilty of a misdemeanor.

In Stryker v. Churchill (1903), 39 Misc. 578, it was held that the attempted forfeiture of an office for a failure to file a statement of expenses was repugnant to the provision of the Constitution, article 13, section 1, official oath, declaring that "no other oath, declaration or test shall be required as a qualification for any office or public trust."

The object of such an enactment is manifest. Its tendency is to make the employe more independent and places him under no obligation to anyone for the opportunity of voting. His necessary absence during the time required to vote becomes a matter of right rather than favor, and he is more likely to vote free from any coercion or undue influence.[b]

The propriety of some such enactment in this State should be thoughtfully considered.

I have thus briefly outlined the substantial features which in my judgment ought to characterize whatever measure shall be proposed reforming our election laws, indicating some of the provisions which it should contain, as well as those which it should omit. It is submitted that radical changes should be avoided, unless deemed absolutely essential. It is wise to constantly bear in mind that all change is not reform. It is believed that what the people of the State desire is a plain and simple measure amending the present election laws in a few particulars, by lessening the opportunities for corruption, intimidation, and every species of fraud. If too much shall be attempted, it is to be feared that nothing at all may be actually accomplished.

It is also desirable that the Legislature should itself prepare whatever measure it may adopt, rather than accept without question the pet scheme of some club, association, or other self-constituted or irresponsible body or individual, which, without any practical experience in the public service and charged with no responsibility for correct legislation, but filled with pride of authorship, seeks to impose upon the Legislature its or his own peculiar plan, regardless of its actual merits. There should be an honest and sincere effort to accomplish something practical for the good of the State, uninfluenced by personal or partisan considerations.

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[b] See note 2.

COMPULSORY VOTING.

That it is the duty of every citizen to take an interest in public affairs, and to exercise the elective franchise at each general election, seems reasonably clear. Whether that duty ought not to be made compulsory by statute is a subject worthy of respectful consideration.

A citizen in every well-regulated State is obliged to do jury duty, and to become a soldier in time of war if necessary, and to educate his children, as well as to care for his kindred, and is bound to perform numerous other duties incident to his citizenship, and it may well be contended that he should be required by law to exercise at all proper times the highest prerogative of citizenship. If it be true, as claimed, that the ignorant and the vicious embrace every opportunity that is afforded to cast their suffrages, so much the more should the law-abiding, educated and patriotic class of citizens be equally as vigilant. It should be recognized that citizenship imposes obligations as well as confers privileges.

It has been suggested that it should be provided by statute that every elector who fails to vote at each general election without lawful excuse, should be subjected to a fine or imprisonment for each offense. Large sums of money are expended at each election, especially in the rural districts, for the ostensible and avowed purpose of "getting the vote out." This alleged purpose, in most cases is a mere pretense, however, and a transparent excuse for bribery and corruption. Money is disbursed under the thinly-disguised claim that it is paid and exacted for teams, time of men, and other services in getting electors to the polls, when in fact its real design or effect is to influence the man whose teams or services are nominally employed, and thereby secure his vote and the votes of his neighbors who accompany or assist him. The political committees of each party report that all over the State many electors, for the purpose of exacting money, assume a disinclination to vote and oftentimes assert that they will not vote unless they are paid for their time and expenses in getting to the polls, and both political parties are thus compelled to hire their own adherents to come out and vote their own party tickets. This shows to what an alarming extent elections have become corrupted. Intense but honest partisanship is preferable to indifference in public affairs. Corruption, and not partisanship, is the great danger of the times.

It is argued that if every elector were compelled by law to vote, under a proper penalty for a failure to do so, a full vote would thereby be insured, and the necessity or pretense for the expenditure of money to "get the vote out" would no longer exist, and the opportunities or excuses for corruption would be greatly lessened. The argument is not without considerable merit, and the proposed change may be regarded as deserving of a fair trial.

I am not aware that the system of compulsory voting is at present anywhere in operation in this country. This may be urged against its feasibility, but possibly the subject has not received that fair or full consideration to which it is apparently entitled.

In "Howell's Early History of Southampton, Long Island," it is related that the people as early as 1643 governed themselves, and determined many questions, as well as elected officers by a vote of the citizens of the town, who were styled "Members of the Court," and the following was one of the civil laws adopted in relation to the enforcement of voting, the exact phraseology and spelling being preserved.

"October 13, 1643. It is ordered that whatsoever matters or orders shall be referred to the publick vote euery man that is then and there present and a Member of the Courte shall give his vote and suffrage eyther against or ffor any such matters and not in any Case to be a neuter."

This ancient precedent recognizing the fact that the exercise of the elective franchise is a solemn duty as well as a privilege, might be followed with advantage in these latter days.[a]

AN ENUMERATION DEMANDED.

Again, for the fourth time, it is recommended that provision be made for an enumeration of the inhabitants of this State as required by the Constitution.[c]

The Constitution permits a census, but it does not require one. But it does imperatively require an enumeration. The Legislature has the power to refuse to give to the people an enumeration, but such refusal is a plain violation of official duty.

An enumeration is necessary for the purpose of basing thereon a reapportionment of the Senate and Assembly districts of the State, and no reapportionment can take place until an enumeration has been had.[a] Justice, honesty, fair play, all sense of propriety, the best interests of the State, and particularly the interests of its growing counties, unite in demanding such enumeration and reapportionment. Equality of representation wrongs no one, but is the right of all. Any political party that deliberately and continuously defrauds its adversary of its constitutional right, because it has the power arbitrarily to do so, cannot long prosper. Temporary political advantage may ensue, but in the end the injustice will be righted.

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[a] Governor Morgan suggested compulsory voting in his annual message of 1860, (*ante*, vol. 5, p. 196). The subject was proposed, but not seriously considered in the Constitutional Convention of 1867.

In the Constitutional Commission of 1872 an amendment was proposed by George B. Bradley declaring it a misdemeanor for a voter to neglect to vote unless prevented by necessary absence or physical disability, but the commission declined to adopt the proposition.

In the Constitutional Convention of 1894, Edward Lauterbach proposed to amend the suffrage section, article 2, section 1, by declaring it to be the duty of the citizen to vote; and Frederick W. Holls proposed an amendment to the registration section authorizing disfranchisement for a period to be specified by law as a penalty for neglecting to vote. The Holls amendment was reported favorably by the committee on suffrage, and discussed at some length in the Convention, but was not adopted.

[c] Const. 1846, art. 3, § 4.

The inequality of the present apportionment is again illustrated in the recent election. In five of the interior counties of the State there was actually a decrease in the total vote as compared with 1884. In the whole State there was an increase of 152,878 votes over the vote of 1884, but over half of that increase was in three counties, to wit: New York, Kings and Westchester. Over two-thirds of the increase was in these three counties, together with the counties of Erie, Monroe, Queens, Onondaga, Rensselaer and Albany. Erie county alone shows an increase of 9,923 votes, being the largest increase outside of the counties of New York and Kings.

These figures demonstrate that the demand for equality of representation is not a partisan matter, but arises in behalf of the growing sections of the State as against the sections which are either decreasing in population or increasing very slightly, and is based upon plain principles of justice and common fairness which cannot much longer be resisted.

The Legislature of this State does not now represent, and has not for several years represented, the sentiments of a majority of the people of the State. From 1882 to 1887, both inclusive, the political party not in control of the present Legislature carried each annual election in the State, and at the recent election two of the three successful State candidates received more votes than the successful Presidential Electors, and yet the Legislature — owing to the existing unfair system of representation which it neglects or refuses to change — has been almost uniformly of the opposite political party, and, although representing only a minority of the people of the State, that party has nearly two-thirds of the present Legislature.

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[a] Const. 1846, art. 3, §§ 4, 5.

This unfortunate situation inevitably deprives the measures passed by the Legislature of that weight and respect which they would otherwise naturally receive or be entitled to as truly representing the legislative will of the people. The path of duty is plain, and lies in the direction of prompt and just action. The Presidential election is over; the political status of the Executive Department of the State for the next three years is settled; there are no very serious political contests pending; the material and progressive interests of the State would be subserved by the creation of new districts, and it would seem as though the time is ripe when partisan considerations should no longer retard or affect the performance of constitutional obligations.

The whole subject is commended to the careful and dispassionate consideration of the Legislature.[9]

THE PRISON LABOR QUESTION.

It is of vital importance that some permanent system for the employment of prison labor should be adopted.

My views upon this subject have been so repeatedly expressed that it seems almost superfluous to reiterate them. The act passed last summer at the Extraordinary Session of the Legislature was apparently a mere temporary expedient designed to bridge over the solution of the question until a more convenient season. It would seem as though it could not longer be postponed.

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[9] As to an enumeration, see 1885, note 18, *ante*, p. 43.

It is understood that the act mentioned was passed with scarcely any discussion, and little consideration, and it fairly illustrates the evils of hasty legislation. Some of the courts have held that it does not apply to local penitentiaries, and thus the anomaly is presented of State institutions being practically forbidden to engage in productive labor, while local penal institutions are unrestricted. The Court of Appeals will undoubtedly have to settle the disputed interpretation. The Legislature should meet this question and dispose of it squarely and courageously, and as a business matter.

This much is clear — the convicts should not remain in idleness. They should be employed at hard labor. Their employment should be regulated and restricted so as to compete with outside labor as little as possible. If the prisoners are to labor at all, of course there will be some competition, however slight, and it is impossible to avoid it. Therefore, the prisoners should be employed in such manner as will afford the least possible competition, under suitable restrictions. Various employments have been suggested whereby this result can be practically accomplished, and the Legislature should carefully consider them and adopt some plan intended to be permanent. The taxpayers, the mechanics, the farmers and all the people desire that this should be done.[10]

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[10] Chapter 382, approved June 6, 1889, amending the revised statutes relative to prisons, provided for the administration of these institutions, including the appointment of officers and subordinates, prohibited contract labor, and required prisoners to be kept at hard labor, according to specified plans applicable to the three grades into which prisoners were divided. The act authorized the employment of the public account, or the piece price system, or both, as might be determined by the Superintendent of Prisons. The act limited the percentage of prisoners who might be employed in specified forms of industry, and required the manufacture of articles commonly used in public institutions.

Section 30, subdivision 2, removals by warden, was sustained in People ex rel. Griffin v. Lathrop (1894), 142 N. Y. 113.

RENEWAL OF FORMER RECOMMENDATIONS.

I renew generally all the various recommendations contained in my previous messages, which have not yet been acted upon by the Legislature. I specifically suggest the desirability of abolishing the Board of Regents and transferring its principal powers to the Department of Public Instruction;[11] of abolishing the State Board of Charities and State Board of Health and vesting their powers in single officials and thereby concentrating responsibility;[12] of limiting, regulating and further restricting the power of corporations in the issue of stock and bonds; of creating a State commission which shall include supervisory powers over gas, telegraph, electric light and telephone companies;[13] providing for a special labor commission to suggest measures in the interest of labor; of providing for a Constitutional Convention upon a just and proper basis of representation;[14] of abolishing the confirming power on the part of the Senate, except where expressly required by the Constitution; of a revision of the tax laws, whereby real and personal property shall be placed upon an equal footing for all purposes of taxation, and personal property be compelled to bear its just share of the public burdens.

WEEKLY PAYMENT OF WAGES.

There seems to be considerable interest manifested on the part of workingmen in favor of some proper statute requiring the weekly payment of wages by corporations.

The reasons why this innovation is desired are apparent, and need not here be reiterated.

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[11] Instead of abolishing the Board of Regents, the Legislature passed an act, chapter 529, on the 15th of June, revising and consolidating statutes relative to the University. The Governor approved the bill. [See also 1886, note 9, *ante*, p. 171.]

[12] As to the State Board of Charities and the State Board of Health, see 1886, notes 10 and 11, *ante*, pp. 173, 175.

[13] As to a gas commission, see 1887, note 13, *ante*, p. 312.

[14] As to a constitutional convention, see 1887, *ante*, p. 470.

There is a statute in Massachusetts which has been in effect since May, 1886, which provides that every manufacturing, mining or quarrying, mercantile, railroad, street railway, telegraph, telephone and municipal corporation, and every incorporated express company or water company, shall pay weekly each and every employe in its business the wages earned by such employe, to within six days of the date of such payment, and a failure to comply with the provisions of the act is punishable by a fine.

It is claimed that this statute has been productive of beneficial results. The propriety of enacting in this State a measure similar to the Massachusetts law is submitted for your careful consideration.[15]

EXCISE LEGISLATION.

The propriety of a thorough revision of the excise laws is conceded by all interests. The present laws are confused, contradictory and fragmentary, and should be codified and embraced in one general statute, plain, simple and easily understood.

The necessity of revision being clear, the Legislature last winter passed an act appointing a commission to effect the same. The commissioners were named in the bill itself, and, although this was an encroachment upon the usually recognized prerogative of the Executive to nominate such commissioners, yet, nevertheless, I approved the measure rather than imperil the success of the proposed codification. The commissioners originally named in the bill were changed during its progress in the Legislature, and a strong partisan character given the commission by the substitution of other names deemed more acceptable to the majority of the Legislature. This was unfortunate, as it may injuriously affect the nature and value of the work of the commission and possibly imperil its final success.

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[15] Chapter 381, approved June 6, 1889, provided that wages of employees of certain specified manufacturing, mining and transportation corporations should be paid in cash, and not in script or store orders.

An act passed in 1890, chapter 388, required certain specified corporations to pay the wages of employees weekly to within six days of the date of payment.

The bill also provided that the commissioners might submit a new excise system if, in their judgment, existing statutes could not be so revised as to provide for a system "adapted to the requirements of the people of the State."

It is understood, although I have no official information upon the subject, that the commission has decided not to report a simple revision or codification of existing laws, but instead thereof to submit an entirely new excise law.

If this is true, it is to be regretted, because the submission of both a revision and a proposed new law would be more acceptable and would enable the Legislature to choose between them, and otherwise to act more intelligently and satisfactorily. Neither am I possessed of any official information as to the details of the measure likely to be presented to the Legislature by the commission, and until its report is made any discussion of its merits is premature and inappropriate.

A few general suggestions, however, upon the whole subject of excise legislation may be pertinent at this time.

It is believed that the people of this State are opposed to absolute prohibition on the one hand, and to the unrestricted sale of liquors on the other. They favor fair, just and equitable excise laws, rigorously enforced. They desire that such laws should be uniform in their operation throughout the State, and reasonable in their provisions. They do not want severe and illiberal laws which public sentiment will not support, and which they know will not be enforced or obeyed. They prefer that, while the policy of license continues to be the policy of the State, the license fees should be reasonable in amount, and like all other proper local revenues should go into local treasuries rather than into the treasury of the State. They recognize the evils of intemperance, and wish in every proper way to do all in their power legitimately to mitigate and suppress them, but also appreciate the fact that laws alone can accomplish but little towards making men temperate.

That distinguished statesman, Horatio Seymour, once well said: "Men may be persuaded — they cannot be compelled to adopt habits of temperance."

The people demand honest excise legislation, not temperance legislation intended only for political effect, impracticable and incapable of enforcement. There is no great difficulty in framing proper excise laws if the subject is approached in the right spirit, free from hypocrisy and sham, and with the sole design of correcting abuses.

It should be borne in mind that so long as it is the policy of the State to regulate the sale of intoxicating drinks by excise laws, the rates fixed should be reasonable in amount. They should not be so moderate as to accomplish no substantial restriction, nor should they be so exorbitant as to amount to practical prohibition anywhere in the State. It is not good policy to attempt to do indirectly what the State is unwilling to do directly. In whatever measure that may be proposed the minimum sum permitted to be charged for licenses should not exceed that which would be regarded as fair throughout the State, leaving the maximum sum to be fixed by the excise commissioners of the respective localities at such sums as local public sentiment may demand and will support, limited, however, by some definite figure not deemed exorbitant. This, to some extent, would be local option or home rule, to which both the principal political parties are more or less committed, and to which no reasonable objection can be offered. It would vest a broad discretion in local excise boards, and enable public sentiment to manifest itself. Such a statute would be uniform, leaving each locality to determine for itself, within reasonable restrictions, the amounts desired to be charged for licenses, and, although the amounts as actually fixed by the excise boards might vary in different places, that would not affect the principle of uniformity contended for. The great State of New York, containing within its borders some twenty-nine cities and hundreds of large villages, is truly cosmopolitan in its character, and no sumptuary laws should be passed which unnecessarily interfere with the reasonable customs and habits of any considerable portion of our citizens, but there should be the largest personal liberty consistent with the welfare and good order of society.

With these general principles in view, the framing of a satisfactory excise law is not a difficult task, if partisan considerations shall not be permitted to enter. The temperance question ought not to be a party question, and it has recently been demonstrated that the attempt to make political capital out of it will surely fail.

It will be found difficult to force legislation upon the people in advance of public sentiment, and in this connection it is interesting to observe the operation of the present excise laws of the State. It has been stoutly urged that the people are clamoring for "high license," so-called, and yet the fact remains that, with the exception of a single locality, there are not charged for licenses by the local officials anywhere the full amounts permitted to be charged under existing laws; and it may properly be suggested that if one-half of the effort made by those who are so persistently advocating additional license legislation should be directed towards enforcing the provisions of existing laws, and persuading the people and officials to avail themselves of their benefits, something more practical would undoubtedly be accomplished, and their good faith vindicated.

The pressing necessity for additional legislation permitting higher license rates to be charged is not so apparent when it is known that the people almost uniformly decline to avail themselves of the privilege of charging the highest rates authorized under existing laws.

Under the present excise laws the following license fees are directed and authorized to be charged, to wit: For liquor licenses in cities, not less than thirty dollars and not more than two hundred and fifty dollars; and in towns and villages, not less than thirty dollars and not more than one hundred and fifty dollars; and for saloon ale and beer licenses, not less than ten dollars.

I have caused to be prepared (from reliable information furnished for official use and believed to be substantially correct) the following two tables showing the amounts now charged under existing laws for licenses in the various cities of the State, and also in the country towns and villages in the various counties of the State:

TABLE I.

HIGHEST LICENSE FEES IN CITIES.

Cities	Liquors	Ale and Beer
Albany	$50 to $100	$25
Amsterdam	36	36
Auburn	165	110
Binghamton	90 to 150	60
Brooklyn	100	50
Buffalo	125	125
Cohoes	40	25
Dunkirk	30	30
Elmira	55	40
Hornellsville	35	35
Hudson	40	25
Ithaca	75	40
Jamestown	50	25
Kingston	65	50
Lockport	75	50
Long Island City	75	75
Newburgh	75	45
New York	200 to 250	30
Ogdensburgh	150	150

Cities.	Liquors.	Ale and Beer.
Oswego	$150	$150
Poughkeepsie	125	75
Rochester	$50 to 75	30
Rome	40	20
Schenectady	75	60
Syracuse	75 to 100	50
Troy	50	30
Utica	50 to 100	30
Watertown	150 to 200	150
Yonkers	50	40

TABLE II.

AVERAGE LICENSE FEES IN TOWNS AND VILLAGES IN ALL THE COUNTIES OF THE STATE.

Counties	Liquors	Ale and Beer
Albany	$30	$30
Allegany	50	30
Broome	60	40
Cattaraugus	40	15
Cayuga	40	25
Chautauqua	30	30
Chemung	40	20
Chenango	50	20
Clinton	50	50
Columbia	30	10
Cortland	40	15
Delaware	45	35
Dutchess	35	15
Erie	30	15
Essex	50	15
Franklin	75	30
Fulton and Hamilton	50	50
Genesee	40	40
Greene	50	30
Herkimer	50	30
Jefferson	50	40

Counties.	Liquors.	Ale and Beer.
Lewis	$40	$15
Livingston	50	30
Madison	30	15
Monroe	45	15
Montgomery	30	10
Niagara	30	30
Oneida	30	30
Onondaga	30	20
Ontario	50	40
Orange	40	25
Orleans	30	30
Oswego	50	30
Otsego	40	20
Putnam	65	35
Queens	65	45
Rensselaer	30	25
Richmond	30	30
Rockland	40	30
St. Lawrence	50	40
Saratoga	60	40
Schenectady	30	30
Schoharie	45	15
Schuyler	40	20
Seneca	30	15
Steuben	50	35
Suffolk	100	50
Sullivan	50	20
Tioga	50	40
Tompkins	75	40
Ulster	50	30
Warren	40	30
Washington	40	20
Wayne	40	30
Westchester	50	30
Wyoming	40	15
Yates	50	25

The foregoing figures speak for themselves. It appears that New York city is the only place in the State where the full amounts authorized to be charged for licenses are actually demanded. Public sentiment cannot be very strong in favor of high license fees in counties like Herkimer, St. Lawrence, Cattaraugus and Chautauqua, when the average sums charged are only about one-third of what are permitted to be charged under existing laws.

It is hardly possible that the State as a whole is desirous of having that which each locality, acting separately, distinctly rejects.[16]

MARRIAGE AND DIVORCE.

The variety and conflict of laws relating to marriage and divorce in the different States have within recent years received the attention of many of our most able jurists and citizens. At the present time these questions, and kindred others involved, are under especial discussion in several Bar Associations, and many suggestions have been made as to the best method of securing harmony throughout the Union in this important branch of our civil law. Under existing laws and decisions very different rules prevail as to what constitutes a marriage, and while a certain divorced person may legally marry in some States, to do so in others, perhaps adjoining, would be a crime, even though no criminal intent existed.

Such anomalies ought not to exist. It would be difficult, indeed, to enumerate the multitude of evil results, complications and injustices that flow from the present deplorable condition of these laws, affecting as they do the most sacred of our domestic institutions. While the correction of these evils and the reduction of these laws to uniformity is surrounded with many difficulties, such a desirable result is not impossible of achievement. In order, however, to obtain as far as practicable the end desired, it is necessary to secure a voluntary concert of action among the States. It is suggested, therefore, that some motion should be made at this session toward a conference of representatives of all the States, or of such as may choose to be represented, to consider the question of uniform marriage and divorce laws. It would seem that such a body, composed as it would assuredly be of able jurists, each especially qualified by education and experience for the work proposed, could hardly fail to frame a measure which would in a great degree mitigate the existing evils, and which would commend itself to a majority of the people, and be made a law by a large number of the States. A conference of a similar character, to consider the minor matter of Executive practice in the extradition of criminals, was proposed by me to the Governors of the other States in 1887, and its deliberations were productive of excellent results.

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[16] The commission to revise the excise laws, appointed in 1888, presented its report to the Legislature on the 10th of January, 1889, with a bill. No general bill was passed, but the Legislature passed a bill to tax the sales of beverages in certain cases, and also a high license bill, both of which were vetoed. See messages of June 4. See also 1887, note 32, as to discriminations in license fees, *ante*, p. 436.

COMPULSORY INVESTIGATION OF FIRES.

The prevention of the enormous annihilation of property by fires is a subject worthy the attention of the Legislature. Already a movement tending to the compulsory investigation of the cause of every fire has been inaugurated in some of the States, and I am led to believe that results beneficial to our State would follow if such a system were established here by law. It is not proposed that any new officers should be created, but that existing coroners in towns and villages should be required to investigate and have power to do such things as are necessary to ascertain, if possible, the cause of every fire. In cities, the fire marshals or like officers would be the authority to make the inquiry. Comparatively few of our citizens are aware of the immense annual loss by fire. In the United States, for each of the past five years, this loss is estimated to have reached the astounding annual average of over $100,000,000, and in New York State alone, careful estimates indicate that an average of over $15,000,000 is the value of property yearly wiped out of existence by the same cause. This amount is fully $6,000,000 more than the average of the whole annual tax levy for State purposes. The yearly increase of taxable property in our State, as established by the State Board of Assessors, is about $100,000,000, but under existing conditions, an amount equal to considerably more than one-seventh of this annual increase in the wealth of our State is destroyed by fires. If any means can be devised to prevent any portion of this destruction, by just so much are taxable values preserved to the State and the general prosperity promoted. It is believed that it is possible to reduce this fire loss at least one-half, or $50,000,000 a year in the United States, and in like proportion $7,500,000, in the State of New York, and some investigators contend that even a still greater saving can be made. A lessening of the amount of property destroyed would inevitably lead to a reduction in insurance rates, and so a benefit would accrue to all our citizens far greater than the slight additional burden which would be imposed in the payment of coroners' fire investigation fees.

A first and most important step toward such saving and benefit would be the immediate compulsory and authentic determination, where possible, of the cause of every fire. Such judicial inquiry would incidentally tend to detect and so prevent incendiarism, would make more apparent existing defects in present methods of building and would record more definitely the cause of fires not now fully understood. This proposed plan of investigation by coroners and other existing officers seems simple, comparatively inexpensive and practicable, and I commend the subject to your favorable consideration.

PRESIDENTIAL TERM AND PROVISION FOR EX-PRESIDENTS.

Except in the matter of sea-coast defenses, wherein New York city was largely if not chiefly interested, I have heretofore in my messages studiously avoided any discussion of Federal legislative topics or the recommendation of instructions to our Senators and Representatives, relative to Federal concerns. That policy, so far as mere legislation is concerned, I still deem it wise to observe, notwithstanding urgent requests to do otherwise, which come from reputable and public-spirited citizens, who are active in the furtherance of projects intended to promote the commerce and advance the manufacturing and agricultural interests of our State. The present time, however, seems peculiarly opportune for our consideration of certain amendments to the Constitution of the United States having relation to the office of President. Such amendments, if proposed in Congress by authority or approval of the State of New York and advocated by its Representatives at Washington, would command and receive the immediate and respectful attention of all the States. The probability of their incorporation into the Constitution would also be much greater now than if their proposal and discussion should be delayed until nearer the next Presidential election. If the suggestions I make commend themselves to your honorable bodies, I recommend that, by joint resolution or otherwise, some formal expression of your views should be communicated to Congress. The amendments which I commend for your consideration are briefly stated as follows:

First. That the term of office of the President and Vice-President shall be six years.*

Second. That the President shall be ineligible for re-election.

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* See the Index for references to various resolutions adopted by State Legislatures relative to the proposed extension of the presidential term, including also a recommendation that the president be ineligible for re-election.

Third. That the President shall immediately, upon the expiration of his term, become a member of the United States Senate for life, and receive an appropriate salary. This amendment shall apply to all living ex-Presidents.

The wisdom and expediency of the amendments lengthening the term of office to six years and rendering the President ineligible for re-election, seem to be generally conceded. The sentiment of the people, the opinions of the newspaper press, and the conclusions of many of our thoughtful political writers are apparently decidedly in favor of such a change. The belief exists and grows stronger year by year that by making these changes proposed material aid would be rendered in the solution of some of the most difficult of the problems which confront us in the administration of governmental affairs. The excitement of a national election exercises a baneful influence upon all business operations and in a measure paralyzes many enterprises for several months in every fourth year.

Business men throughout the country would welcome the relief in this direction which a longer presidential term would afford them. The immense commercial and manufacturing development of our country apparently makes it more and more impossible to carry to a successful termination within four years any reform affecting such interests. Six years is, however, the life of three Congresses and affords a freer opportunity for a fair and full trial of any line of policy affecting internal matters which might be determined upon. In six years a policy approved by the people would be apt to secure for itself the choice of United States Senators sufficient to form a majority in that body, and so would tend to be sustained instead of obstructed by that branch of our Federal Legislature, the composition of which can be entirely changed only in that interval. The result of the last general election deprives the public service of the priceless experience and unique official training of another President of our Republic. At the moment when his availability as a public servant is presumably greatest, and representing as he does, not only the eminence of character which called him to the chief magistracy, but the accumulated distinction and wisdom which necessarily comes with the discharge of its duties for a series of years, he must soon share the fate of all his illustrious predecessors and be consigned, in the prime of his manhood and the full maturity of his faculties, to the comparative privacy of unofficial life. This is not as it should be. I am persuaded that it is not as the people of the country wish it to be. I see no reason why this should longer be tolerated. A more auspicious moment than this has never presented itself in all our history, I believe, for securing to our retiring Presidents such rank and position as shall make due account not only of the services they may have rendered, but of those services which they more than any other persons are still capable of rendering to their country.

Among the several suggestions looking to this end, which have received more or less of the consideration of thoughtful men, none has commended itself to my judgment so entirely as the amendment of the Federal Constitution, previously suggested, by which the President shall become a Senator of the United States for life, with appropriate salary, the moment his term of office expires.

The propriety of this third amendatory proposition is, perhaps, not so well established in the public mind. It is, however, submitted in the confident belief that careful discussion will reveal its merits and confirm the judgment of many of our statesmen who have already pronounced themselves favorable thereto. A wise consideration of the honor due to one who has held the chief office in the gift of our people declares that such provision would be most fitting — honorable alike to people and President. Had our Constitution from the beginning appointed such Senators, Washington would have served as a life Senator for two years; John Adams for twenty-five years; Jefferson for seventeen years; Madison for nineteen years; Monroe for six years; John Quincy Adams for eighteen years; Jackson for eight years; Van Buren for twenty-one years, and Grant for nine years. As to the possible number of such Senators, investigation shows that during the existence of the Republic the average number of living ex-Presidents has been somewhat less than three. In the present situation partisanship cannot be accused of seeking advantage in this proposed change, for a representative of each of the great political parties would be the recipients of such Senatorships.

These considerations and many others that will readily occur, and that might be mentioned, have led me to suggest to you the proposal to Congress of these amendments, and I trust that this apparently favorable time and situation of affairs may not be allowed to pass without some affirmative action therein on your part.*

PRESIDENT WASHINGTON INAUGURATION CELEBRATION.

The centennial celebration of the inauguration of George Washington as first President of the United States of America, on April 30, 1789, is to be observed with appropriate ceremonies in the city of New York, where such inauguration took place. A voluntary committee, composed of the most active, competent and representative citizens of New York city, is engaged in making the preliminary arrangements for the celebration, and proper action should be taken by the State for co-operation with this committee. Liberal appropriations should be afforded, if necessary, and I suggest that provision should also be made for a participation by the entire National Guard of the State in the celebration. It is by participation in such patriotic observances that interest in the militia of our State can be judiciously maintained, and the members thereof incited to continued progress and yearly increasing efficiency.[17]

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* Former President Grover Cleveland in an article in the Youth's Companion of January 2, 1908, on "Our People and Their Ex-Presidents," after describing the experience of several Presidents subsequent to their retirement from office, suggested that "definite and generous provision" ought to be made for Ex-Presidents, "based upon motives of justice and fairness, and adequate to the situation," and expressed the opinion that the condition was not met by the meager and spasmodic" relief afforded "under the guise of a military pension or other pretext," nor by "making compensation, already accrued or accruing, dependent upon the discharge of senatorial or other official duty." Mr. Cleveland disclaimed any personal interest in the suggestion.

CONCLUSION.

This year, by an infrequent but most agreeable concurrence of date and event, the Executive and the Legislature actively assume their constitutional duties upon the same day. I trust that this may be esteemed an auspicious indication of the harmonious personal relations that it is hoped are to prevail between us, notwithstanding our political differences of opinion. Partisanship should have no place in the great part of our enactments, and even in partisan matters truest patriotism should control. That these desirable results may be attained is my earnest desire, and to accomplish them shall be my aim in passing upon measures submitted to the Executive by the Legislature. In conclusion, taking pleasant advantage of the coincidence of the assembling of the Legislature upon the first day of the year, and of the time-honored custom yet observed among us of extending greetings upon that day, I welcome you to your duties and wish you a Happy New Year.

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[17] Several acts were passed at this session relative to the Centennial Celebration of Washington's first inauguration.

Chapter 6, passed February 2, authorized the committee in charge of the celebration to use, with the consent of the mayor, certain streets in the city of New York for the erection of such structures, as might be approved by the mayor for the purposes of the celebration.

Chapter 37, passed March 1, appointed a commission to make provision for the celebration of the Washington centennial in the city of New York, on the 30th of April, 1889. The act appropriated $55,000 for general purposes connected with the celebration, and also $20,000 to be expended under the direction of certain officers of the Grand Army of the Republic for the transportation and subsistence of veteran soldiers and sailors of the late war designated by such officers to attend the celebration as representatives of the various Grand Army posts in the State. The act also appropriated $125,000 for the pay, transportation and subsistence of members of the National Guard designated to attend the celebration.

Chapter 112, passed April 8, authorized the city of Brooklyn to expend $25,000 in connection with the celebration.

Chapter 147, passed April 15, authorized the city of New York to expend $15,000 in decorating the City Hall and other public buildings, and for the display of fire works.

Chapter 179, passed April 23, authorized the city of New York to appropriate $1,000 to the Volunteer Firemen's Association of the city for the expenses of such association in entertaining visiting firemen.

Another act, chapter 285, approved May 14, authorized the appropriation of a like sum, $1,000, for expenses to be incurred by the Veteran Firemen's Association in entertaining visiting firemen.

DAVID B. HILL.

SPECIAL MESSAGES.

January 10. To the Senate: Transmitting the annual report of the commissioners of pilots of the port of New York.

January 25. To the Assembly: Transmitting the annual report of the Cooper Union.

February 4. To the Senate:

Veto of a bill entitled "An act in relation to the salary of the overseer of the poor in the town of Geneva, Ontario county, and to repeal sections 2 and 3 of chapter 234 of the Laws of 1861, entitled 'An act to reduce the number of overseers of the poor in the county of Ontario, and to fix the salary for the performance of the duties of the office in the town of Seneca, in said county.'" [18]

" The measure, as a whole, is objectionable as unnecessary special legislation. The division of the town of

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[18] The bill was not passed over the veto, but chapter 69, passed March 16, amended the act of 1861, chapter 234, by repealing section 2, which fixed the compensation of the overseer of the poor of the town of Seneca, and also section 3, which regulated its payment.

Seneca and the erection of the town of Geneva from one portion thereof, is claimed to be the reason why the act is desired.

There is no objection to a repeal of chapter 234 of the Laws of 1861, which fixed a salary for the overseer of the poor of the town of Seneca. Such an act would be appropriate, but I object to a special act of the Legislature fixing the salary of the overseer of the poor of the town of Geneva. If it is desirable that this town should be relieved from the effect of the general law (chapter 242 of the Laws of 1870), fixing the *per diem* compensation of overseers of the poor in the several towns of the State, then it should be done under another general act applicable to the whole State, whereby the local authorities of each town may be permitted to fix and determine the salaries of such officials. Such an act would be eminently proper.

There are too many towns in the State of New York to permit a special law to be enacted for each one of them, fixing the salaries of their town officials, and it is only by strictly adhering to this rule that necessary general legislation is likely to be secured."

February 4. To the Assembly:

Veto of a bill entitled "An act to alter the commissioners' map of the city of Newburgh."

" This is unnecessary special legislation. The Legislature, as a general rule, should not interfere in the matter of opening or closing streets in the city of Newburgh, or in any other city.

There is no objection, under proper restrictions, to conferring upon local authorities the power to open or close streets generally, but a particular street should not be opened or closed by a special act of the Legislature.

The principle of home rule for cities would be violated if this act should be permitted to become a law, and it would create an unwise precedent. The reasons given in 1887, in my veto of Assembly bills numbers 17 and 374,* 'To change the map of certain wards in New York city,' are applicable to this measure, and I cannot consistently approve it."

The bill was not passed over the veto.

February 11. To the Assembly:

Veto of a bill, entitled "An act to repeal chapter 688 of the Laws of 1867, entitled 'An act relating to the place of holding elections and town meetings in the town of Batavia.'" [19]

"This act is improperly framed. The law proposed to be repealed was a special law regulating the place of holding the elections in the town of Batavia, and giving to that town the benefit of provisions not applicable to the whole State, and it is very proper that it should be repealed. But the difficulty is that this act does not absolutely repeal it, but by the latter clause of the act it is proposed to leave the original law in force, so far as town meetings are concerned, until some affirmative action is taken by the electors.

It is believed that this is not proper. It is impossible to know from an inspection of the statute itself whether it is in force or not. The act should be explicitly and wholly repealed, and, if necessary, a provision might be added permitting the proper local authorities to meet and fix the place for the holding of the next town meeting. Then the whole legislation would be consistent. A new bill can easily be framed to answer the purposes sought to be accomplished by this defective one."

**Ante*, p. 350.

[19] This bill was not passed over the veto. Chapter 30, passed February 27, repealed the act of 1867, chapter 688, relative to town meetings in Batavia, and required specified town officers to fix the time and place for holding the next town meeting.

February 11. To the Assembly:

Veto of a bill entitled "An act in relation to the relief of the poor in the town of Greenbush, Rensselaer county."

"This bill is objectionable as special legislation. It relates to only one town in a single county and provides a distinct system for the relief of the poor and the management of the poor affairs of that town. Some of its provisions are wholly unnecessary, being already covered by the general poor laws of the State, and, while others of its provisions are undoubtedly meritorious, they should be incorporated in general laws applicable to the whole State.

I object to each town in the State having a special act of the Legislature passed to meet its peculiar supposed needs. It seems impossible to secure any beneficial general legislation upon any subject, if special acts upon the same subject, applicable only to particular localities, are to be constantly approved.

The object of this bill is to remedy existing abuses, but such abuses are liable to occur in almost any town in the State, and the evils should be cured by general rather than special laws.

I regret that I cannot consistently approve this measure."

The bill was not passed over the veto.

February 13. To the Senate:

Veto of a bill entitled "An act to amend chapter 173 of the Laws of 1882, entitled 'An act fixing the salaries of the stenographers of the Supreme Court in the third judicial district.'"

"This measure increases the salary of the official stenographers of the third judicial district of the State. It is a special bill relating to only one district. There is already pending in the Legislature another special bill increasing the salaries of the stenographers in the sixth judicial district, and it is understood that it is also to be passed.

In the first place, it is submitted that there is altogether too much legislation pertaining to stenographers. During the past four years I have approved or permitted to become laws some twenty-nine different special acts relating to the compensation of stenographers, and I must decline to approve any more until some general act shall be prepared regulating the compensation of official stenographers throughout the State, and equalizing or adjusting in some proper way the salaries which they ought properly to receive.

I object to so much piecemeal or fragmentary legislation upon this subject. The passage of a bill relating to one district is made the pretext for the passage of a bill for another district, and it is believed that this is a fitting opportunity to insist that such methods of legislation should cease. Besides, it is deemed unwise and inexpedient to enter upon any general increase of official salaries at this time.

It is understood that there is an unusually large number of bills now pending in the Legislature, calling for an increase of salaries, and the approval of this measure is likely to encourage the passage of others, and furnishes an unwise precedent. Some of the measures referred to may be meritorious, and I do not intend to prejudge their merits, but desire simply to suggest that the taxpayers of the State are already laboring under many burdens at this time, and the people — especially in the agricultural districts — are poor and have little ready money, and every unnecessary increase of taxation should be avoided.

I am the more readily constrained to withhold my approval of this measure for the reason that it is not many years since the salaries of these officials were fixed, and the amount which they are already receiving, while not extravagant or extremely liberal, is, nevertheless, a reasonably fair compensation for their services, and I do not think it expedient, under all the circumstances, to increase it at this time."

The bill was not passed over the veto.

February 13. To the Senate:

Veto of a bill entitled "An act to amend chapter 116 of the Laws of 1863, entitled 'An act to establish a free school in district number one, in the town of Hempstead.'"

"The district affected by this bill is operating under a special act of the Legislature, and this bill proposes to amend that act. If there must be special legislation, then I do not know that there is much objection to the amendment, but I do not think that there should be any more special legislation in relation to particular school districts, even though they are operated under a special statute.

A school district is one of the smallest political divisions into which the State is divided, and there are too many of them which have special acts requiring legislation to justify the Legislature in passing particular acts for each district. The objects sought to be accomplished by this bill can be effected by a general act giving ample powers to all school districts incorporated under particular acts.

I have heretofore recommended the appointment of a commission for the purpose of presenting to the Legislature a series of general acts, and I take this occasion to reiterate that recommendation. In the meantime, I cannot consistently approve bills like the one in question, which is herewith returned."

The bill was not passed over the veto.

February 18. To the Assembly:

Veto of a bill entitled "An act to authorize the board of education of the village of Lyons to furnish additional school accommodations for school district number six, in the town of Lyons in the county of Wayne, and to provide for the payment therefor."

"I am advised by the Superintendent of Public Instruction that there is no real necessity for this bill. If this is so, then the measure should not be enacted, as every unnecessary law is a burden upon the people which ought not to be imposed.

The district affected by this bill is operating under a special act of the Legislature (chapter 129 of the Laws of 1856, as amended by chapter 296 of the Laws of 1860, and chapter 260 of the Laws of 1863. Code of Public Instruction, page 880).

The purpose of this bill is to authorize the board of education to procure sites, erect two school-houses and borrow the money to pay for the same. The special act applicable to this district does not, in terms, confer this power upon the board of education, but it does provide, at the beginning of the tenth section, that 'said board of education shall possess all the powers and be subject to all the duties in respect to said school district that the trustees of common schools now possess or are subject to, not inconsistent with this act, and such other powers and duties as are given or imposed by this act.'

There does not seem to be any limitation in the act which would prevent the board from exercising all the powers of this section conferred upon the trustees of common school districts by the general law. Title VII of the Consolidated School Act (chapter 555 of the Laws of 1864) empowers trustees to do all that this act seeks to empower this board to do, except to select the new sites. The general law contemplates that this shall be done upon a call of the ayes and noes in a duly convened school meeting. There would seem to be no more reason why the sites cannot be determined in that way in the present case than may be advanced in many other instances. Aside from that difficulty, the board has power, under the general law, when authorized by a district meeting as in the present case, to issue bonds and include in the annual tax levies such sums as may be necessary to meet them and to erect school buildings. Besides, in addition to these objections, the bill is technically incorrect. It speaks of the 'board of education of the village of Lyons.' Really, there is no such board. It is the board of education of school district number 6, in the town of Lyons. These reasons are sufficient to require the withholding of my approval of this measure."

The bill was not passed over the veto.

February 18. To the Assembly:

Veto of a bill entitled "An act to amend section 3 of chapter 91 of the Laws of 1856, entitled 'An act to incorporate the St. Lawrence University and Theological Seminary.'" [20]

"This bill amends a special act of the Legislature incorporating an educational institution. The amendment principally consists in enlarging the limit of the amount of property which the institution may hold.

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[20] This bill was not passed over the veto. The Governor's suggestion as to a general law was embodied in chapter 191, passed April 25, which limited the amount of property that might be held by religious, educational, literary, scientific, benevolent or charitable corporations or corporations organized for hospital, infirmary or other than business purposes.

The same subject is included in the General Corporation Law, 1890, chapter 563, section 12.

I object to a special bill of this character. A general bill should be passed fixing a proper limit to the amount of property which such educational institutions may hold. The limit should be applicable to all the educational institutions of the State. The amount which any particular institution may hold should not depend upon the favoritism of the Legislature, but all should be treated alike. It has been the custom heretofore to approve bills of this character, but the propriety of a general act is so apparent that I think the best interests of the State will be subserved by insisting upon the passage of a general act, which I would cheerfully approve.''

The bill was not passed over the veto.

February 19. To the Senate:

Veto of a bill entitled "An act to incorporate the 'Germania,' of the city of Brooklyn."

''My objection to this bill is that it is a special act amending another special act passed in the year 1864, increasing the amount of property which the corporation may hold. The object of this corporation, as declared in its special charter, is 'the promotion of artistic taste of vocal and instrumental music and of social entertainments.' Such corporations can now be formed under general laws, and the amount of property which they should be permitted to hold should be uniform. I would cheerfully approve a general law providing that all corporations created for such purposes, whether under general or special laws, may hold property to the amount mentioned in this bill, but I must decline to approve a special act for this purpose.''

The bill was not passed over the veto.

February 19. To the Senate:

Veto of a bill entitled "An act to authorize and direct the county clerks of Cattaraugus and Columbia counties to record certain notices of pendency of actions now on file in the county clerk's offices of said counties, and to prepare suitable indices to the records of notices of pendency of actions in said offices."[21]

"I have never approved any bills of this character. In the year 1885 I expressly vetoed a bill for the same purpose in reference to the county of Columbia. In the same year I also vetoed a similar bill applicable to Oneida, Orleans, Genesee and Westchester counties. These bills were local and special in their character, applicable only to the particular counties named. The reasons for these vetoes are fully set forth in my Public Papers of that year, at pages 112 and 131.

In the year 1887, with some hesitation, I permitted three special acts to become laws without my approval, applicable to the counties of Franklin, Clinton, Orange and Westchester.

It is possible that there may be some public necessity requiring that the notices mentioned in these various acts should be recorded in the various county clerks' offices of the State. I was not convinced of that fact in 1885, but modified my views in a slight degree by subsequent reflection. The frequency of these acts, however, convinces me that some general principle should be adopted in reference to these matters. It may be assumed that these notices should either be recorded in all the counties of the State, or in none of them. They should not be required to be recorded in one county and not in another; because the same reasons, if they exist at all, exist in all the counties of the State or in none.

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[21] An act passed in 1864, chapter 53, required county clerks to record notices of pendency of actions thereafter filed. This subject was afterward included in the Code of Civil Procedure, section 1672.

* *Ante*, pp. 63, 70.

My objection at this time to this measure (if there must be any legislation at all in relation to this subject) is that there should be a general bill covering all the counties of the State. If this bill should be approved or permitted to become a law, it would unquestionably be followed by others applicable to other counties, and the session laws would be encumbered with numerous unnecessary enactments. If a general bill covering all the counties of the State, except those already provided for, should be passed, the question as to the necessity or propriety of these notices being recorded would then be fairly presented, and would receive earnest and careful consideration on my part as a question not prejudged, but rather as a new and open one."

The bill was not passed over the veto.

February 21. To the Assembly:

Veto of a bill entitled "An act to amend chapter 157 of the Laws of 1883, entitled 'An act to enforce collection of the taxes levied in the county of Jefferson.'"

"The taxes in the towns of the county of Jefferson are collected under a peculiar system applicable only to that county. This bill proposes to amend that special act changing some of the details of the system. The amendment is not objectionable of itself, but I object to having different laws in each county of the State in regard to the collection of taxes. The county and State taxes throughout the interior counties of the State should be collected under one uniform system, so that a citizen moving from one county to another may easily understand the laws applicable to the collection of taxes. The special law applicable to the county of Jefferson ought to be repealed, and the taxes in that county collected in the same manner that they are collected in the majority of the counties of the State. If the proposed amendment should be approved, there is no prospect of this being done.

I must decline to approve this bill, in the hope that this action may lead to a general statute doing away with all special statutes for the collection of State, county and town taxes."

The bill was not passed over the veto.

February 21. To the Assembly:

Veto of a bill entitled "An act to amend chapter 438 of the Laws of 1886, entitled 'An act to create the New York Post-Graduate Medical School and Hospital.'" [See note 20.]

"The principal amendment proposed by this bill increases the limit of the amount of property which the corporation is permitted to hold. The educational institution in question was incorporated under a special act, and this bill proposes to amend that act. I object to the proposed legislation, however, upon the ground that there should be a general act fixing the limit of the amount of property which this and similar institutions may be permitted to hold. There is no propriety in amending the charters of these various educational institutions every few years, changing the limit of the amount of property which they may legally hold. There should be one comprehensive enactment covering the whole subject.

If these special bills are approved from time to time to meet emergencies, it is clear that there will be no general legislation enacted upon the subject."

The bill was not passed over the veto.

February 25. To the Senate:

Veto of a bill entitled "An act to incorporate the Polytechnic Institute of Brooklyn."

"The act creates certain persons, with their associates and successors, a body corporate to establish, regulate and maintain an institution for the study and instruction of the physical and applied sciences, literature and the arts. In addition to the general powers, restrictions and obligations conferred and imposed upon all similar institutions by title third, chapter eighteenth, part first, and article fifth, title first, chapter fifteenth of the Revised Statutes, the bill seeks to confer certain additional powers which it enumerates.

The State commits the authority to incorporate colleges and academies to the Board of Regents of the University in very comprehensive language. Chapter 184 of the Laws of 1853, provides that 'the said Regents are hereby empowered, at any time, by an instrument under their common seal, which shall be recorded in the office of the Secretary of State, to incorporate any university or college, or any academy, or other institution of learning, under such name, with such number of trustees or other managers, and with such powers and privileges, and subject to such limitations and restrictions in all respects as may be prescribed by law, or as the said Regents may deem proper in conformity thereto; and every institution so incorporated, in addition to the powers which may be vested in them as aforesaid, shall have the general powers of a corporation under the Revised Statutes of this State.'

The same act also authorizes the Regents to alter or amend or repeal charters granted by them.

The Regents may incorporate these institutions '*with such powers and privileges and subject to such limitations and restrictions as are prescribed by law or as the said Regents may deem proper in conformity thereto.*' Then the Regents have the power to do all that this bill does except where it varies the general statutes in favor of this particular institution. It is doubtful if it is good policy to do this. If it is done, it is more than likely that the institution will, in time, deem it necessary to apply to the Legislature to change some of the provisions which specially apply to it. If the general statute is not broad enough to permit the Regents to do all that the interests of colleges and academies call for, they should be amended. If those provisions are adequate to that end, then the present bill is unnecessary. Besides, this bill is objectionable because it authorizes the corporation to hold property without any limit to the amount thereof so far as the property actually occupied and in use by the corporation is concerned.

In any view, the bill cannot be consistently approved."

The bill was not passed over the veto.

February 25. To the Senate:

Veto of a bill entitled "An act to amend chapter 79 of the Laws of 1857, entitled 'An act to incorporate the Century Association,' as amended by chapter 138 of the Laws of 1883." [See note 20.]

"The principal amendment proposed by this bill increases the limit of the amount of property which the corporation known as the Century Association is permitted to hold. It is similar in character to several other bills which have reached me this session, and which I have declined to approve.

The frequency of these special measures demonstrates the propriety of a general act fixing a proper limit to the amount of property which all corporations of this character may hold.

The reasons heretofore given in disapproving the other measures referred to, compel me to disapprove this one."

The bill was not passed over the veto.

February 25. To the Senate:

Veto of a bill entitled "An act to authorize the laying of a sewer or culvert under the Erie canal in the city of Utica, and making an appropriation therefor."[22]

"The first objection to this bill is that it is mandatory in its character. It 'directs' as well as authorizes the construction of the sewer in question, and in that respect the title of the bill is misleading.

The construction of the sewer, if authorized at all, should have been left to the discretion of the Superintendent of Public Works, in which official is vested the general control and management of the canals of the State, under the Constitution and the laws.[e] Ordinarily, such matters as the determination of the propriety of the construction of sewers, the building of bridges, and the making of all ordinary repairs and improvements to the canals should not be arbitrarily assumed by the Legislature, but should be controlled by the advice and left to the discretion of the Superintendent of Public Works.

The second objection is that the State is under no legal or equitable obligation to construct the sewer in question, as I am advised by the Attorney-General. It is conceded that the sewer is not needed for the benefit of the State, but is intended solely for the benefit of the city of Utica. The State has done nothing which has necessitated the construction of this sewer, and if the canal had never been built there would still be the same necessity for a sewer for the benefit of Utica.

The construction of sewers in cities and villages along the line of the canals should be governed by some general principle, and not be merely a matter of discretion or favoritism on the part of the Legislature. The State should not construct sewers, nor erect bridges, nor make other local improvements upon the canals intended solely for the benefit of particular localities and not required for canal purposes, except in those instances where the State is under some legal or equitable obligation to do otherwise.

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[22] The bill was not passed over the veto, but by chapter 80, passed March 27, the city of Utica was authorized to lay an iron pipe and raise money for the purpose of constructing a sewer or culvert under the Erie canal.

[e] Const. 1846, art. 5, § 3, am. 1876.

If this bill should be approved, it would afford a most troublesome precedent, and it would be difficult to resist the claims or importunities of every other city or village along the line of the canals desiring the construction of a sewer within their boundaries.

If there are some precedents which would justify or excuse the approval of this measure, they should not be followed, but a just and proper course should now be marked out and hereafter rigidly adhered to.

The taxpayers living in portions of the State away from the canals and little benefited by their use, have at least a right to insist that there shall be rigid economy, rather than prodigal liberality exercised in the disbursement of public moneys affecting improvements connected with the canals.

The most that the State can be asked to do in regard to the sewer in question is to permit the city of Utica to construct the sewer under the canal at its own expense, affording it every reasonable facility for that purpose, under reasonable regulations to be established."

February 26. To the Assembly: Transmitting the annual report of the State Commissioners of Health.

March 11. To the Assembly:

Veto of a bill entitled "An act to amend section three hundred and sixteen of the Code of Civil Procedure."[23]

"The title of this bill should be amended so as to show the subject to which it relates. This course has been heretofore pursued in reference to amendments to the Civil as well as the Penal Code, and it is better that it should be continued. A resolution to recall the bill, for the purpose of making this amendment, is understood to have passed the Assembly, but failed in the Senate just before its recent adjournment. A new bill, with a proper explanatory title, can easily be passed."

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[23] This bill was not passed over the veto, but a new bill was passed with an amended title, chapter 441, in conformity with the Governor's suggestion.

March 11. To the Assembly:

Veto of a bill entitled "An act to authorize the Milford Centre Cemetery Association of the town of Milford, county of Otsego, to care for and control all that parcel or plot of ground now set apart for burial purposes, and known as Mumford burying ground, situated in aforesaid town."

" This act authorizes the Milford Centre Cemetery Association to take charge of a certain burial ground adjoining the ground of said association, and to exercise acts of ownership thereon the same as if said association owned the said burial ground. The difficulty with the bill is that the State has no jurisdiction to grant any such authority. The State does not own the adjoining burial grounds, but they are owned by certain unknown persons. The State has no more jurisdiction to authorize acts of ownership over this property than it has over any other property in which it has no interest.

The association has just as much authority to take possession of these burial grounds without this act as with it. There is no basis whatever upon which the necessity for or the propriety of the bill can be maintained."

The bill was not passed over the veto.

March 11. To the Assembly:

Veto of a bill entitled "An act to amend the title of sections 1 and 2 of chapter 558 of the Laws of 1888, entitled 'An act to provide for the construction of fish-ways in the dam across the Chittenango creek, in the village of Bridgeport, Madison county, New York.'" [24]

"This bill is defective in that, while it evidently intends to confer certain authority upon the Commissioners of Fisheries of the State, it refers to 'the *Commissioner* of Fisheries.'

Owing to the recent adjournment of the Legislature, the bill could not be returned for amendment, and I am, therefore, compelled to withhold my approval from the measure."

March 11. To the Assembly:

Veto of a bill entitled "An act to erect a third school commissioner district in the county of Cattaraugus, and to divide the said county into three school commissioner districts, and to provide for the appointment and election of school commissioners therein." [25]

"The object of this bill is to establish a third school commissioner district in the county of Cattaraugus. Chapter 482 of the Laws of 1875, as amended by chapter 543 of the Laws of 1881, authorizes the boards of supervisors of the several counties of the State ' to divide any school commissioner district which contains more than two hundred school districts, and to erect therefrom an additional school commissioner district.' If either of the present school commissioner districts of Cattaraugus county now contains over two hundred school districts, the board of supervisors of that county have legislative jurisdiction over the subject-matter of this bill. If the limit of two hundred school districts, as fixed by the general law, is too high, such limit should be reduced by amendment to the general law.

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[24] This bill was not passed over the veto. But a new bill correcting the error suggested by the Governor was passed and became a law, chapter 166, on the 18th of April.

[25] This bill was not passed over the veto. At the time of its passage the law authorized the board of supervisors to alter a school commissioner district if it contained more than 200 school districts. Cattaraugus county then had two commissioner districts, but by the limitations of the statute the board of supervisors did not have power to erect a third district. The Consolidated School Law of 1894, chapter 556, authorized boards of supervisors to erect additional school commissioner districts when such a district contained more than 100 school districts. Cattaraugus county was afterwards divided into three school commissioner districts.

If it is desired to rearrange the school districts now constituting two school commissioner districts into three such districts, an amendment authorizing a rearrangement of such character should be made to the general law.

As each school commissioner receives an annual salary of one thousand dollars, payable out of the free school fund of the State (Laws of 1885, chapter 340, section 5), a temptation naturally exists to increase local officers without increasing local taxation.

The Legislature is respectfully referred to a veto of a somewhat similar bill, which was transmitted to the Legislature by me on May 16, 1887." *

March 12. To the Senate: Transmitting the annual report of the Civil Service Commissioners.

March 13. To the Assembly:

Veto of a bill entitled "An act extending the jurisdiction of the Department of Public Parks in the city of New York over West End avenue, and all streets between said avenue and Riverside Park from Seventieth to One Hundred and Sixth street, inclusive."

" The first objection to this bill is that its provisions, if proper to be enacted at all, should be incorporated into the Consolidation Act of the city of New York, by way of amendment, rather than contained in a separate and independent enactment.

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* *Ante*, p. 402.

The second objection is that the bill interferes with the proper distribution of the powers and jurisdiction of the various departments in the city of New York. It proposes to take from the Department of Public Works the control of certain streets, and vest such control in the Department of Public Parks.

No adequate reason appears why this change should be made. It may be laid down as a correct general rule that the jurisdiction of the Department of Parks should be limited to the parks of the city, and that of the Department of Public Works should embrace the control of the streets of the city. Neither department should be permitted to encroach upon the recognized and natural prerogatives of the other. If exceptions ought ever to be made to this rule, they should be based upon considerations of great weight and of peculiar importance, which certainly do not exist in this instance.

Unquestionably the placing of West End avenue under the jurisdiction of the Park Commissioners would inure to the benefit, pecuniarily and otherwise, of the owners of the property on that avenue, and relieve them of certain burdens which would be assumed by the whole city and give them certain peculiar advantages not enjoyed on other streets of the city, but it would create an unwise precedent and lead to a clamor for the placing of other streets in that vicinity under the same jurisdiction.

Under section 688 of the Consolidation Act the Park Commissioners have a certain partial supervision over a space of 350 feet from the outside boundary of all public parks above Fifty-ninth street, and as Riverside Park has an irregular boundary, it is claimed that one of the principal purposes of the bill is the simple extension of this irregular line to a natural or regular boundary, such as a street like Riverside avenue would make. But it is evident that this is not the real or principal purpose of the measure, else the boundary would have been fixed on the west side of West End avenue, whereas, by the express terms of the bill the whole or both sides of West End avenue are included, thus making it clear that the principal object of the bill is to have West End avenue included under the jurisdiction of the Park Commissioners, and that the straightening of irregular or varying boundaries is a mere incident to the main purpose.

The bill is not for the benefit of the city, but I fear is rather in the interest of real estate speculators owning property on West End avenue and vicinity, and it is passed in direct violation of a principle essential to the proper and orderly administration of public affairs in New York city.

If this bill should be approved, it would be found difficult to resist similar applications in behalf of numerous other streets in that section of the city. The determination of the proper control of streets should not be made to depend upon the partiality or favoritism of the Legislature, but should be governed by some fixed principle rigidly adhered to."

The bill was not passed over the veto.

March 13. To the Assembly:

Veto of a bill entitled "An act for the protection of game in the county of Oneida."

"This is a special bill prohibiting the shipment, for the purposes of sale or trade, to points outside the county of Oneida, of certain game birds killed within the county, and imposing a penalty for violations of the act proposed.

The bill is objectionable:

First. It relates only to the county of Oneida. There does not seem to exist any good reason why that county should have a special law passed by the Legislature. If the provision desired is a meritorious one, it should apply to the whole State, and not be confined to one county.

Second. By chapter 194 of the Laws of 1849, boards of supervisors are authorized 'to provide for the protection of all kinds of game, of shell and other fish within the waters of their respective counties,' and the power thus conferred upon the board of supervisors of Oneida county seems to be ample and sufficient for all proper protection of game within that county."

The bill was not passed over the veto.

March 13. To the Legislature: Transmitting the annual report of the Quarantine Commissioners, and the report of the Commission created by chapter 270 of the Laws of 1888, to make needed purchases for repairs, etc., at the quarantine establishment of the port of New York.

March 18. To the Assembly:

Veto of a bill entitled "An act to amend chapter 212 of the Laws of 1858, entitled 'An act in relation to the Weedsport Union School.'"

"The general school law now confers upon all school districts substantially all the powers sought to be conferred by this bill upon the Weedsport district. That district is operating under a special act (section 212 of the laws of 1858), but there is nothing in that special act limiting or abridging any powers specified in this bill; and, accordingly, the district already possesses them pursuant to the provisions of the general statutes. The only difference between the provisions of the bill and the general statutes is that the latter require that notice of such action, as is referred to in this bill, must be published for four weeks, or posted for twenty days, while the bill provides for shorter notice. This is not material. There is no reason for the passage of the bill on that account.

The able Superintendent of Public Instruction, to whom the bill has been referred by me, advises that it be not approved.''

The bill was not passed over the veto.

March 18. To the Assembly:

Veto of a bill entitled "An act to amend subdivision four of section 190 of the Code of Civil Procedure, relating to appeals from the General Term of the Supreme Court."

'' The bill as originally introduced contained an important amendment to section 190 of the Code, but it was modified during its passage in the Legislature, and, as finally passed, it simply enlarged the time — from sixty to one hundred and twenty days — within which an appeal, on the decision of a demurrer, can be taken from the General Term to the Court of Appeals.

There is no necessity for any such change. It is believed that sixty days' time is ample and sufficient within which to perfect such an appeal.

Amendments to the Code should not be made upon slight or trivial grounds, but only when there is some clear and pressing necessity for a change. The people already have sufficient reason to complain ' of the law's delays,' and, therefore, in the interest of a speedy administration of justice, the amendment should not become a law.''

The bill was not passed over the veto.

March 25. To the Assembly:

Veto of a bill entitled "An act to amend chapter 576 of the Laws of 1880, entitled 'An act to ascertain by proper proofs the citizens who shall be entitled to the right of suffrage in cities of sixteen thousand inhabitants, or upwards, and the towns and villages abutting against the boundary of any such cities,' as amended by chapter 13 of the Laws of 1882." [26]

"This bill proposes to extend the provisions of the general registration act for cities, so that it shall apply to the town of Fishkill, in the county of Dutchess.

The bill is a concession that there exists a necessity for a registration of electors in the country districts of the State. The situation in Fishkill is no different from that which exists in all the large towns and villages in the rural portions of the State. If a registration is demanded in Fishkill, it is equally demanded elsewhere. If it is deemed necessary in one town of Dutchess county in order to preserve the purity of elections therein, the same facilities for the prevention of fraud should be afforded to the rest of the State.

There is no answer to this position. I cannot approve a special law for one town, not because a registration law is not required for that town, but because there should be passed a general registration law applicable to all the towns of the State. No reasonable argument or excuse can be advanced why such a general registration law should not be enacted.

There was a universal complaint at a recent presidential election all along the counties bordering upon other States, that non-residents voted in our State in large numbers. It is claimed that there was apparently a concerted plan of colonization carried on, whereby residents of Pennsylvania, Vermont and other States voted in our rural counties which adjoin those States. It is difficult to detect such frauds in country districts, as the persons so voting immediately depart, and there are no adequate facilities or opportunities for ascertaining their identity, or their whereabouts, or securing their apprehension. Such frauds would be impossible, or rendered more difficult, by a well-considered general registration act such as now exists in the cities of the State. Now that public attention is being directed to the subject of reform in our elections, it is a fitting time for the enactment of such a measure, which is equally as important as any reform measure now pending before the Legislature.

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[26] This bill was not passed over the veto. A general registry law was passed in 1890, chapter 321, which applied throughout the State, except in the cities of New York and Brooklyn, and except in certain local elections.

While this bill, in its present shape, cannot consistently be approved, yet its presentation at this juncture is opportune, because it is an emphatic recognition of the necessity of registration for the prevention of frauds upon the ballot-box, and leads to the suggestion of the desirability of general and comprehensive legislation upon the subject.

I am advised that a bill has been introduced by Senator Linson which provides for the registration of electors in all the towns and villages of the State, similar to that which exists in our interior cities, and this opportunity is embraced to urge the prompt passage of so eminently meritorious a measure. It is not a partisan measure, unless the prevention of illegal voting in the rural districts can be regarded as more for the benefit of one party than the other. On the contrary, it would be as fair for one political party as another, and is believed to be demanded by the honest and intelligent men of all parties. Governor Hoffman, in his annual message of 1870, said:* 'I respectfully call the attention of the Legislature to the want of uniformity in the registry and election laws of the State. All laws relating to elections should be uniform in their principles and general in their application.' Governor Cornell, in his annual message of 1880, recommended 'a well-guarded registry law for *all* incorporated villages.'*

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* *Ante,* vol. 6, p. 125.

No good reason can be urged why the country districts of the State should be exempt from the provisions of a strict and carefully framed registry act. Frauds upon the elective franchise are not confined to the cities of the State. Neither are they limited to general elections, but pertain to town meetings and municipal elections as well.

A registry law should embrace the whole State, and its regulations and restrictions should apply to all elections and to all citizens and to all sections substantially alike.

It is submitted that the present Legislature can take no more effectual steps towards securing true electoral reform than by the enactment of a proper measure providing for a general registration of electors throughout the State. What the people want is substantial and practical reform, rather than the enunciation of mere theories, or the adoption of doubtful or untried experiments relating to our elections."

March 28. To the Assembly: Transmitting the annual report of the trustees of the Sailors' Snug Harbor.

April 1. To the Assembly:

Veto of a bill entitled "An act to restrict the powers of the annual town meeting in the town of Pelham, in the county of Westchester, and to provide for the holding of a special town meeting in the said town in each year, and to define the power of such special meeting."

"This bill proposes to restrict the powers of the annual town meeting in the town of Pelham to the 'election of officers and matters necessarily connected therewith,' and to require a special town meeting to be held on the seventh day thereafter, in each year, for the transaction of such other business as is now transacted at the annual town meeting.

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* *Ante*, vol. 7, p. 434.

Neither the wisdom nor the economy of holding two town meetings each year, instead of one, is apparent. The second town meeting would inevitably be neglected.

A more serious objection to the bill is the proposed destruction of uniformity in the government of towns. A person moving from one town to another ought not to be compelled to learn a new law for town meetings, different from that to which he had been accustomed. This bill emphasizes the objectionable features of unwise and unnecessary special legislation."

The bill was not passed over the veto.

April 1. To the Assembly:

Veto of a bill entitled "An act to release to Bertha Racka the interest of the people of the State of New York in and to the lands of which Louis Zinke, late of the city of Brooklyn, in the county of Kings, died seized and possessed." [27]

"This is supposed to be an ordinary escheat bill, although the face of the bill does not indicate how the State acquired the lands proposed to be released. All such bills should be drawn so as to release only such rights in the lands as the State has acquired by escheat.

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[27] An act passed in 1831, chapter 116, contained provisions relative to escheated lands, but applied only to cases where the person last seized was a citizen of the State, in which cases the commissioners of the land office were authorized to fulfil any contract either written or verbal, which might have been made with the person last seized. This act was amended and extended by subsequent statutes, and in 1890, an act was passed, chapter 279, containing general provisions relative to the release of escheated lands, authorizing a petition to the commissioners of the land office by specified persons claiming interest in the lands, the title to which had failed by reason of alienage, and authorizing a conveyance by the commissioners under regulations prescribed by the act. The statute covered a wide range of parties, and of interests liable to be affected by the failure of heirs. This subject was afterwards included in the public lands law of 1894, chapter 317, which contains an article on escheated lands.

But I base my disapproval of this bill upon the broader ground that the system of releasing escheated lands by special laws should be discontinued. Under this system valuable time of the Legislature has been occupied in investigating the details of each individual case, and the session laws of each year have been cumbered with an average of nearly twenty special escheat laws, in which the public have no more interest than in the ordinary judgment of any court.

Several very important general laws have already been passed by the present Legislature, covering topics upon which special legislation was being frequently demanded. These general laws will remedy the public inconvenience which gave rise to the demand for such special legislation, and will greatly lessen the labors of the Legislature hereafter. A general bill conferring upon the Commissioners of the Land Office power to release escheated lands, in proper cases, is now pending in the present Legislature. In case such general bill shall become a law, no serious injury can result to the present applicant by reason of the delay necessary to avail herself of its provisions.

For these, and further reasons appearing in my message to the Senate of even date herewith, disapproving a similar bill, I am convinced that it is my duty to disapprove this bill also."

The bill was not passed over the veto.

April 1. To the Assembly:

Veto of a bill entitled "An act to release to Armin E. Brunn the right, title and interest of the people of the State of New York in and to certain real estate in the town of Oyster Bay, Queens county."

"This bill is disapproved for the reasons stated in my messages to the Senate and Assembly, respectively, of even date herewith, disapproving Senate bill No. 454, and Assembly bill No. 245, which were also, like this, ordinary escheat bills."

The bill was not passed over the veto. [See note 27.]

April 2. To **the** Senate:

Veto of a bill entitled "An act to authorize the trustees of the village of Flushing to raise money for the permanent improvement of the roads, avenues and streets of the village of Flushing, and to provide for the payment of the same." [28]

"Among the many useful general laws lately enacted by the Legislature is chapter 504 of the Laws of 1887, authorizing any village in the State, whether incorporated under a general law or by special charter, to make the improvement proposed by this bill precisely in the manner proposed, except that the taxpaying electors of the village, at a special election, must first authorize the expenditure. This condition, required by the general law, is believed to be a wise one. Certainly, the taxpaying electors of the village are better qualified than the Legislature can be to determine whether the proposed expenditure is proper and necessary. By enacting this general law the Legislature expressed its approval of the salutary doctrine of home rule, and no good reason appears why the village of Flushing should be exempted therefrom by a special law. It ought to be no more difficult to hold a special election in the village of Flushing than to procure the passage of a special act by the Legislature. If such a special election shall result in favor of the proposed improvement, the village will then have all the power in the premises which it would have if this bill were allowed to become a law."

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[28] The bill was not passed over the veto, but another bill was passed, June 8, 1889, chapter 412, amending the Flushing charter and embracing detailed provisions relative to public improvements including sewers, and apparently intended to obviate the Governor's objections to the first bill. The Governor approved the new bill.

April 2. To the Senate:

Veto of a bill entitled "An act to release to Bridget McKenna all the right, title and interest of the people of the State of New York, of, in and to certain real estate situated in the village of Honeoye Falls, Monroe county." [See note 27.]

"From fifteen to twenty special escheat acts of this nature have heretofore been passed at each session of the Legislature. The annual average for the past five years is over eighteen.

These bills are often drawn, as is the one before me, with nothing to indicate how the State acquired title to the lands proposed to be given away. It is not an unusual occurrence for a bill to pass both houses of the Legislature, under the guise of an escheat bill, which, in reality, gives away State lands which have been bid in by the State for unpaid taxes or otherwise acquired by the State by purchase, and to which the proposed donee has not the shadow of an equitable claim.

As an illustration of such a case, in my message to the Legislature of 1887, disapproving a similar bill (see page 144 of Public Papers of the Executive for 1887),* I had occasion to say: 'This bill has the appearance of an ordinary escheat bill, and I assume that the Legislature very naturally misapprehended its real character. The Comptroller informs me that the lands proposed to be given away by this measure were purchased by the State upon a mortgage foreclosure in 1829, and actually cost the State $373.12, without including the interest. The bill is manifestly an improper disposition of the property of the State, besides being clearly unconstitutional.'

It is in no way derogatory to the intelligence or faithfulness of the Legislature that such cases must some times occur under the present system of special escheat bills. It

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Ante, p. 405.

is respectfully insisted that the proper work of the Legislature is to declare, by general laws, what shall be the general policy of the State in such matters, and not to attempt to apply such general policy to the facts of each individual case. The investigation of the details of an individual case, for the purpose of ascertaining whether such case is within the general policy of the law, is essentially judicial in its nature, requires time, and possibly the examination of witnesses or of public records. Such investigation, from its very nature, cannot ordinarily be done by the Legislature, overburdened during its limited session with a great mass of more important matters relating to the public welfare.

The Constitution has wisely established responsible State officials, including the Attorney-General, Commissioners of the Land Office, with power to convey certain lands of the State when proper and necessary, and with such other powers and duties as may be prescribed by law.[f]

I am advised that a general bill has been introduced and is now pending in the Legislature, authorizing the Commissioners of the Land Office, upon such terms as they shall consider just, to release escheated land to a proper applicant.

Of the wisdom of a proper general bill of this nature, there can be no question. I, therefore, disapprove this special bill, with the expectation that the present Legislature will pass a general bill which will provide for the just and proper disposition of the lands proposed to be released by this bill, and at the same time for all other cases similarly situated."

The bill was not passed over the veto.

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[f] Const. 1846, art. 5, § 5.

April 4. To the Assembly:

Veto of a bill entitled "An act to give the Board of Claims jurisdiction to hear, audit and determine the claim of William Kowalski against the State of New York, and exempting the same from the limitation contained in section 7 of chapter 205 of the Laws of 1883."

"There does not seem to be any particular necessity for this bill. The claim of William Kowalski is for services as a witness before an investigating committee in 1882, at the city of New York. If the claimant desires to prosecute his claim before the Board of Claims, of course the statute of limitations would be a defense thereto, and this bill is necessary to prevent such a defense being interposed. But there is no necessity for the claimant insisting upon any claim before the Board of Claims.

Under existing laws the Comptroller of the State has the power of auditing all claims for services as witnesses before investigating committees. With rare exceptions it has been contrary to the policy of the Legislature to enact statutes depriving the Comptroller of the authority to audit claims where the power to audit has heretofore been vested in him. Occasionally, under peculiar circumstances, there may arise a case where such a statute would be appropriate, but this does not seem to be one of them.

Last year the Legislature amended the general act creating the Board of Claims by depriving that board of jurisdiction to hear claims where the Comptroller is already vested with the power to audit the same, and that statute was intended to prevent claimants, having claims against the State arising out of investigating committees, from presenting such claims before the Board of Claims.

The claimant mentioned in this bill, if he thinks he has a legal claim against the State, can present the same for audit to the present Comptroller, who is competent to pass upon the same, and, when once audited, the usual appropriation for the payment of all such claims can be applied for the purpose of liquidating it.''

The bill was not passed over the veto.

April 15. To the Senate:

Veto of a bill entitled "An act to amend section 2 of chapter 319 of the Laws of 1852, entitled 'An act to amend an act entitled "An act to incorporate a fire company in the town of Flatbush, in the county of Kings."'"

'' The purpose of the bill is to reduce the period of service in this fire company entitling a member to exemption from military and jury duty. Section 24 of chapter 76 of the Laws of 1888 authorizes the fire department of the town of Flatbush to issue certificates of exemption to any member of the fire companies of that department. No reason appears why all the companies in such department should not be treated uniformly in respect to exemptions. Moreover, the Code of Civil Procedure provides for exemptions of firemen from jury duty, and any special law upon that subject is unnecessary, and imposes needless labor upon the officers who are compelled to ascertain what persons are exempt from such service.''

The bill was not passed over the veto.

April 15. To the Senate:

Veto of a bill entitled "An act to enable Vassar College to take and hold additional real and personal property." [See note 20.]

'' The only substantial change proposed by this bill is to enable Vassar College to hold property the yearly income or revenue of which shall not exceed the value of $60,000, instead of $40,000, as provided by its present charter.

Since this bill was introduced a general law has been enacted, being chapter 139 of the Laws of 1889, amending subdivision 4 of section 36 of article 2 of title 1, part 1 of the Revised Statutes, so as to provide that the trustees of every college to which a charter shall be granted by the State ' shall have power to take and hold by gift, grant or devise, any real or personal property, the yearly income or revenue of which shall not exceed the value of $250,000. Every college or university incorporated under the laws of this State shall have power to take and hold property to the amount provided in this subdivision, notwithstanding that its charter may prescribe a less amount.'

The Legislature followed sound principles of legislation in amending the general law so as to provide at once for Vassar College in this respect, and for all other colleges similarly situated."

The bill was not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act to amend chapter 654 of the Laws of 1869, entitled 'An act authorizing the construction of a railroad through certain streets in the city of Poughkeepsie, and through certain streets and roads in the town of Poughkeepsie, in the county of Dutchess.'"

"This bill is both unconstitutional and unnecessary special legislation.

First. The bill is unconstitutional. By the present law the cars of this street railroad may be drawn by animal power only. This bill proposes to allow such street cars to be drawn by such other power as the common council of the city and the highway commissioners of the town of Poughkeepsie shall approve. The rights of the owners of abutting property and of the fee of the streets, for compensation for the additional damage to their property arising from converting an ordinary horse railroad into a steam railroad, are wholly ignored by this bill. The change authorized by this bill would clearly amount to a taking of private property without compensation, and would be clearly unconstitutional.[z]

The Constitution does not permit the construction of a steam railroad in a street by the indirect method of first obtaining the right to lay tracks for a horse railroad, and compensating property owners for damages accordingly, and then obtaining legislative permission to use steam without further compensation for the possibly increased injury.

The argument was urged in favor of my approval of this bill, that the bill met with such universal approval in the Legislature that it was ordered to a third reading in each house without having been read in either house or seriously debated in committee, and that it was passed without being printed. If such statement is correct, it may fairly be presumed that the objectionable features of the bill escaped the attention of the Legislature. A general bill of this nature, it is safe to say, would not have been passed. It would seem desirable that objectionable special bills should be as carefully scrutinized by the Legislature as meritorious general bills.

Second. The bill is unnecessary. A general law, chapter 252 of the Laws of 1884, provides a constitutional method by which a street railroad company may substitute any other than locomotive steam power for animal or horse power for propelling its cars."

The bill was not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act to amend chapter 418 of the Laws of 1884, entitled 'An act in relation to infectious and contagious diseases of animals.'"

"The act proposed to be amended by this bill authorizes the State to cause to be slaughtered animals affected with, or liable by reason of exposure to communicate, contagious diseases, and authorizes the owners of animals so slaughtered to recover in proceedings before the Board of Claims the value thereof. This bill proposes a new rule of evidence for proving claims in such proceedings, to wit: That a verified statement by the claimant of certain facts, and that certain certificates shall be presumptive evidence of the truth of their contents. Such verified statement constitutes substantially the claimant's pleading, and the proposed rule of evidence would transfer from the claimant to the State the burden of proving certain facts which the claimant ought to be required to establish by affirmative evidence, subject to cross-examination. This bill is too broad in its provisions. The Attorney-General considers the bill in its present form unwise and unfair to the State.

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[z] Const. 1846, art. 1, § 6.

There would be seem to be no good reason why the State should not ordinarily, in actions and legal proceedings, have the same rights as individuals in like cases, or why the rules of evidence in actions between an individual and the State should not be the same as in actions between individuals.''

The bill was not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act to confirm the title of Edouard Thebaud and Emile Thebaud, their heirs and assigns, in and to certain shares of certain real estate which was of Estelle N. Arnaud, deceased, and releasing the right, title and interest of the people of the State of New York therein." [See note 27.]

" This is an ordinary special escheat bill. The reasons for my disapproving bills of this nature have been fully set forth in my messages to the Assembly of the present year, disapproving Assembly bills Nos. 1, 245, and 113, and in my message to the Senate of the present year, disapproving Senate bill No. 254."

The bill was not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act to amend chapter 393 of the Laws of 1886, entitled 'An act to revise and amend an act entitled "An act to incorporate the Young Men's Association of the city of Buffalo," passed March third, 1837, and the acts amendatory thereof and supplementary thereto,"'"[29]

"This bill proposes two changes in the charter of this corporation;

First. That no person shall be elected a member of said corporation intermediate a caucus election of officers.

This provision is undoubtedly in the interest of purity of corporate elections. But this corporation is, by its charter, given absolute power to declare through its by-laws who shall be members thereof and how they shall be elected. The corporation is practically asking the Legislature to amend its by-laws in respect to a matter over which the Legislature has already given the corporation full power, and which properly belongs in its by-laws, and not in its charter. A special act of the Legislature would add nothing to the effectiveness of such a by-law. The principle of home rule is as applicable to a library corporation as to a city or village. The corporation should not ask the Legislature to do for it what it already has power to do for itself.

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[29] The bill was not passed over the veto. An act passed in 1893, chapter 498, exempted the real property of a corporation or association "organized exclusively for the moral and mental improvement of men and women," or for educational or other specified purposes, but not specifically including libraries. This subject was included in the Tax Law of 1896, chapter 908, section 4, subdivision 7, which enlarged the act of 1893 by including libraries and other corporations not previously mentioned.

In 1901, article 3, section 18 of the Constitution was amended by adding a clause prohibiting special laws exempting property from taxation.

L. 1893, chapter 498, was sustained in People ex rel. American Bible Soc. v. New York (1894), 142 N. Y. 348.

Second. It is proposed to exempt devises and bequests to this corporation from the provisions of chapter 483 of the Laws of 1885, known as 'The Collateral Inheritance Tax Act.'

There may be no objection to exempting all corporations of the same general character as the Buffalo Library from the operations of that act, but it is certainly inequitable to exempt this corporation only, and leave all other public library corporations subject thereto. During the past two years I have had occasion to disapprove special bills exempting from taxation the property of the Masonic Hall Association of Buffalo, of the Methodist Episcopal Hospital of Brooklyn, of the Bedford Reformed Dutch Church, of the Young Women's Association of Troy, of the Gallaudet Home, of the Cathlic Union of Albany, and of the S. R. Smith Infirmary. (See Public Papers of the Executive for 1888, p. 157.) Many other bills of like nature have been recalled by the Legislature from the Executive Chamber for the purpose of amendment by striking out such objectionable provision.

The frequency and readiness with which such special bills are passed by the Legislature indicates the desirability of a general law which shall operate uniformly and equitably upon all institutions equally entitled to exemption. Such a general bill has been introduced and has now for some time been pending in the present Legislature. If the language of that bill is not satisfactory, it can be amended so as to express the judgment of the Legislature. It certainly seems strange that the Legislature should be so ready to pass a special bill for the exemption of each institution which asks singly for exemption, and should be so reluctant to pass a general bill which would put an end to the constant demand for such inequitable special legislation."

The bill was not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act to release certain lands, which have escheated to the State, to Johann Heinrich Straack, Anna Margaretha Schmidt and Elizabeth Mueller, children of Gottfried Straack, late of the city of Buffalo, and to enable said children to convey the same." [See note 27.]

"As indicated by the title, this is an ordinary special escheat bill.

Upon the first day of the present month I returned to the Assembly, without my approval, two similar bills,—Assembly bills numbers 1 and 245—and on the same day I returned to the Senate, without my approval, a similar bill—Senate bill number 454—stating to each house briefly my reasons for such disapproval in each case.

Since that date two more special escheat bills have been passed by the Legislature and presented to me for approval. This action indicates a disagreement between the Legislative and Executive departments as to the wisdom of continuing the custom of enacting a special escheat law for each individual case, instead of enacting a general law which shall, once for all, provide for all cases of like nature.

Such difference of opinion justly demands a candid reconsideration of my former position, and a fuller statement of the reasons for my final conclusion.

It will be noted, first, that the difference does not arise from the general policy of releasing the interest of the State in escheated lands to persons equitably entitled thereto. If there were any doubt as to the wisdom of such general policy, it might well be urged that it should be left to the Legislature to interfere only in special and exceptional cases. But the general policy has been long established. The uniform practice of the Legislature has been to release escheated lands to claimants in all cases in which an equitable claim has been made to appear. The passage of an escheat bill long since ceased to be a question of general policy, and now involves merely an investigation into the equities of the claimants in each particular case. Such an investigation is essentially judicial in its nature — not legislative. With all due respect to the Legislature, that body is, by the very nature of its organization, unfitted to conduct such an investigation. The Legislature is organized to declare, and not apply, the law. After having declared the general policy of the State, neither the Legislature nor the Executive should be burdened with the additional labor of examining the case of each applicant. Experience has thoroughly demonstrated the soundness of this reasoning. I have frequently had occasion to call the attention of the Legislature to bills passed under the guise of releasing escheated lands, which, in reality, gave away lands purchased by the State for valuable consideration.

A general bill has been introduced, and is now pending in the present Legislature, conferring upon the Commissioners of the Land Office the power to release escheated lands in proper cases. The Commissioners of the Land Office are created by the Constitution; they are responsible and trusted officials, namely, the Lieutenant-Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor.[h] They are intrusted by the Constitution with much more important powers than releasing escheated lands, but powers of a like general nature. They can meet with much less inconvenience and public expense than the Legislature, and need not be hurried in their investigation, as the Legislature must be. This board, by its very constitution, with the head of the law department of the State as one of its members, is fitted, as the Legislature by its very constitution is unfitted, to duly investigate the equities of the claimants and the rights of the State in each case.

But, if the Legislature cannot safely trust this constitutional board with the power of releasing escheated lands, certainly somebody can be selected by the Legislature upon whom such power can safely be conferred.

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[h] Const. 1846, art. 5, § 5.

The proposition that some general law should be enacted for such purpose is wholly devoid of political partisanship. I cannot believe that the reluctance of the Legislature to enact general laws of this nature, each of which will remove the necessity for a great mass of special bills, arises from the fear of any member that he will lose an opportunity to confer special favors upon individual constituents, or from a fear that the work of the Legislature will be lessened and the time of its sessions shortened. It is true that special cases and special laws first develop the necessity and indicate the substance of general laws. But, after such necessity is once developed, a general law dispenses with the necessity of legislation for special cases. Formerly the names of individuals were changed by special laws, corporations of all kinds were created by special laws, villages were incorporated only by special laws. More lately the names of corporations were changed and village fire companies and hospitals were incorporated only by special laws. All this is now changed by the enactment of general laws covering such cases, and the Legislature is no longer called upon to consider special bills for the incorporation of trust companies, for changing the name of ordinary corporations, for incorporating hospitals, for organizing village fire companies, for enabling villages to raise money by special elections for proper village purposes.

The constant demand for legislation for special cases crowds the attention of the Legislature off from the careful and deliberate consideration of important general measures, and is the inevitable cause of the passage, too frequently, of ill-digested and defective bills, and the delay and neglect in passing carefully prepared and much-needed general bills. The reduction of such over-legislation for special cases is a reform which is the primal condition of all other reforms by State legislation.

A firm and consistent exercise of the veto power by the Executive, in disapproving special bills in such cases, has led to the enactment of a commendable number of wise general laws during the past few years, greatly to the promotion of public convenience and the reduction of the labor of the Legislature. Such experience confirms my belief that an adherence to my determination to disapprove all special escheat bills which shall be presented to me hereafter will work similar good results."

The bill was not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act authorizing the board of supervisors of the county of Niagara to appoint a board of equalization of taxes for said county, and prescribing the duties of such board of equalization of taxes."

"The objection to this bill is that it applies only to one county. If the system proposed is desirable for Niagara county, it is equally desirable for other counties similarly situated. If each county is to proceed by separate enactment in instituting such system, the Legislature will be kept busy passing special bills with innumerable variations, and special amendments to each, as has been the case with the special county laws for sales of land for unpaid taxes."

The bill was not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act to incorporate the Grand Lodge of the Order of Sons of Liberty of the State of New York."

"So far as can be ascertained from the face of this bill, it is unnecessary special legislation. The general laws of this State provide for the incorporation of societies for almost every conceivable purpose, literary, scientific, educational, benevolent, social, recreative, political, and for the purposes of mutual benefit insurance, and many others. This bill does not indicate under which of these various classes the corporation to be created thereby would come, but it is safe to say that its purpose would be one of those specified, and, if so, it should be incorporated under the proper general law."

The bill was not passed over the veto.

April 23. To the Senate:

Veto of a bill entitled "An act to close a portion of One Hundred and Eleventh street in the city of New York."

"This bill proposes to close, until the first day of October next, a portion of a street in the city of New York which has been laid out on the map of said city for a number of years. The local authorities already have power to close the street. Application is made to the Legislature because the local authorities refuse to exercise their power.

I am thoroughly in sympathy with the object sought to be attained by the bill, and it is with great regret that I am compelled in this case to sacrifice my personal preferences to a just principle for which I have steadily contended. I have been called upon repeatedly to insist that the Legislature should not interfere in matters properly within the domain of local self-government, and exercise powers already possessed by local authorities.

The purpose of the bill is to preserve the grounds of the New York Base Ball Club for the present season. I am a hearty believer in the great national game, and would be pleased in every proper way to encourage this club. But the bill violates the first principles of home rule, to which

I have endeavored consistently to adhere. It being conceded that the local authorities have power, the mere fact that they act obstinately or corruptly, if any such allegations are made, in refusing to grant the needed relief, affords no grounds for the violation of a wise and salutary general principle. The approval of the bill would be a dangerous precedent for future action.

If there is, as is contended, an almost universal sentiment in favor of preserving the base-ball grounds in question, it would seem that a proper presentation of the case to the local authorities ought to procure favorable action on their part.

The bill has only reached the Executive Chamber to-day, and I hasten to make my views known, in order that the club may promptly understand the situation, and make such arrangements for the future as the situation may demand."

The bill was not passed over the veto.

April 25. To the Senate:

Veto of a bill entitled "An act to amend chapter 583 of the Laws of 1888, entitled 'An act to revise and combine into a single act all existing special and local laws affecting public interests in the city of Brooklyn.'"

"This bill changes the method of electing the board of aldermen of the city of Brooklyn. At present, under the provisions of chapter 447 of the Laws of 1883, the board consists of nineteen members, who serve without pay. Twelve of them are elected from three districts, each district being represented by four members of the board; the remaining seven are chosen by the entire body of voters of the city. The bill before me abolishes this method of election and substitutes in the place of the present board a board of twenty-six members, each to be chosen from one of the twenty-six wards of the city.

The arguments which are and have been urged in support of this bill are of two distinct descriptions, and may well be considered separately.

In the first place, it is declared that if the board of aldermen is elected upon the ward system, its membership will more accurately reflect the numerical proportion of the two parties in the city. Under the existing law, it is complained, there has been a continuous large majority of one party.

This argument at least has the merit of candor. It discloses the true motive prompting the introduction and passage of the measure. That motive was evidently perceived by the members of the two houses, for the bill passed each of them by a strict party vote; no Republican voted against it, no Democrat is recorded in its favor. It is, therefore, strictly and avowedly a partisan measure, resting its claims to favor upon its alleged superior fairness as compared with the existing method of election.

No one will question that political institutions and machinery should, within reasonable and practicable limits, represent the political complexion of the community; and if this claim were all that it seems to be upon its face, or if it were not surrounded by qualifying conditions and circumstances, it would be entitled to most serious consideration. But its force is materially dissipated by at least two important facts: First, it is a familiar principle that those who seek equity should do equity. If the political partisans who are in a majority in the two houses of the Legislature desire to reconstruct the system of apportionment and representation prevailing throughout the State, as well as in the city of Brooklyn, they have the power to do so. An alleged reform which only touches where the changes which it causes inure to the benefit of one party, and which carefully avoids making any changes of any other description, is entitled to but slight respect. Such is the character of this alleged reformatory measure.

When the State census of 1875 had been completed it was the duty of the Legislature, under the mandate of the Constitution, to at once apportion the senators and assemblymen upon the enumeration returned by it.[1] The Legislature of 1876 was controlled in both branches by the same party which controls this present Legislature of 1889. But the duty of apportionment, though in terms prescribed by the Constitution, was postponed until 1879, in spite of the continuous, urgent presentation of that duty to the Legislature by my predecessor, Governor Robinson. When the apportionment was finally made it was obviously and, apparently of deliberate purpose, grossly unfair. Since the passage of the apportionment bill of 1879, the growth of the population of the two cities of New York and Brooklyn has so far outstripped that of the remainder of the State that the unfairness of the existing apportionment is continuously and strongly emphasized. The constitutional duty of enumeration, which should have been performed in 1885, and which could have been performed any year since then, has been neglected. As a result, the city of Brooklyn has to-day fewer representatives in each house of the Legislature enacting this law than it is entitled to, and the bill, therefore, comes before me as an attempt on the part of two bodies, who numerically misrepresent their constituencies, to reform a method of election of the board of aldermen of the city of Brooklyn, against which they can bring no stronger charge than the allegation that it possesses, in slight degree, the same elements of unfairness which are so prominent and glaring in their own composition. A general effort by the Legislature to re-adjust the representative machinery of the State to the existing conditions of population will meet my hearty concurrence, but I can neither co-operate with nor respect a so-called effort at reform which is partial and unjust.

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[1] Const. 1846, art. 3, §§ 4, 5.

When the Legislature shall see fit to perform its constitutional duty by directing an enumeration of the inhabitants of Brooklyn and the rest of the State, and thereby the wards of the city can with propriety be equitably re-adjusted, then it will be time enough for the State Legislature and the Executive to consider the question of fixing representation in the municipal legislature of Brooklyn by wards.

A second consideration bearing heavily upon the claim that this bill is a fair re-adjustment of the method of electing the board of aldermen of the city of Brooklyn, is suggested in the history of the city and its subdivision into its existing wards. In 1873 the party now in the majority in the two houses of the Legislature found itself, for the first time in several years, in possession of both branches of the Legislature and of the office of Governor. It thereupon proceeded to reconstruct the government of the city of New York and of the city of Brooklyn. Concerning the latter city an act was passed known as the Brooklyn charter of 1873. This act sub-divided the city into twenty-five wards.

Prior to that time the number of wards in the city had gradually increased from nine which composed it at the time of its incorporation in 1834, to twenty-two. It is asserted, and, upon examination, the facts strongly sustain the assertion, that this charter of 1873, by adding three to the number of wards previously existing — which new wards were judiciously cut from the area of older ones — and by re-adjusting and rectifying the boundary lines of many others, made it highly probable that, in any election, the party then and now controlling the Legislature would secure all the representation which it could fairly claim, together with all that accident or skillful gerrymandering could add.

While the act of 1883 was pending, a chief argument of those who supported it for reasons of public policy, was that the ward system, as created by the charter of 1873, was not merely grossly unfair, but was seriously detrimental to the best interests of the community. The reasons given for such statements were that the Legislature of 1873, in constituting the twenty-five wards established at that time, created very few of a doubtful political complexion. Independent and public-spirited voters, therefore, could exert but small influence in by far the greater number of the wards. In not more than four were the two parties so evenly balanced, it was said, as to afford the minority a fair chance to prevail in case a bad nominee was presented by the majority. Thus the system established in 1873 was objectionable in other than partisan senses, and it is not surprising that those who promoted the passage of the law of 1883 should have done so in the belief and with the avowal that its enactment could not fail to improve the aldermanic representation of the city.

This present effort, therefore, to change the method of the election of aldermen in the city of Brooklyn, when considered simply with reference to its alleged justice, is seen to be at the bottom a revival of a system of representation which was partisan in its conception and unfair in its original construction.

Passing from the consideration of the fairness of the measure, it is well to examine its pretensions as a reformatory device. Upon this point the history of the method of election of aldermen in the city of Brooklyn, as already disclosed, and in the city of New York, is not uninstructive. (See a veto message, filed by the Executive, of the New York city aldermanic bill, on June 15, 1886, which contains a memorandum of the method of election of the board of aldermen in the city of New York during the last twenty years.)*

It is instructive, in this connection, to note that when the bill under which the aldermen of the city of Brooklyn

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Ante, p. 278.

are now elected was introduced, it was brought forward as a reform measure. It was asserted on its behalf, with much emphasis and variation of statement, that the board of aldermen, as then constituted and as it had been chosen for years under the ward system, was an illiterate and venal and a disgraceful body; that the abolition of the system of ward representation would free the choice of the members of the board from the worst evils attendant upon municipal government; that the seven men who were to be chosen at large, being selected from so great a constituency as the whole city, would be inspired with civic pride; and that the whole body of the citizens of Brooklyn voting for them would have an opportunity to determine, by their choice of these seven aldermen-at-large, the political and moral complexion of the entire board.

A few extracts from the newspapers of Brooklyn show how that measure was regarded in 1883.

I. Extract from an interview in the Brooklyn Eagle, May 9, 1883, with Mr. Henry, then a Republican, who introduced the aldermanic bill:

'The third bill in which I took a special interest, and watched all through the stages of its passage, was the aldermanic bill providing for the reorganization of the board of aldermen on an entirely new basis. The bill provided for the election of four aldermen in each of the three senatorial districts, and seven at large, the aldermen to serve without pay. I regarded the measure as of great importance to Brooklyn. It passed to a third reading with but slight opposition, and went to the Senate, where Senator Kiernan presented a substitute providing for six aldermen from each of the senatorial districts and three at large; and also providing that the present keeper and assistant keeper of the City Hall should hold office until the first of January, 1888.

'I refused to concur in the substitute and asked for a committee of conference. At first I refused to accept the bill in any shape different from the original one, but when the substitute assumed the same form as that presented by me, with the addition merely of the clause prolonging the terms of the City Hall keepers, I withdrew my opposition and the bill was passed. The bill is identical with that presented in the Assembly, with the exception that the Ninth ward is placed in the Fourth Senatorial District instead of the Second.

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'I believe it will raise the standard of the common council, and make that body more respected by the people at large than it has been for a long time.'

The session of the Legislature of 1883 ended on May four; so that Mr. Henry's interview was five days after the adjournment of the Legislature.

II. The Brooklyn Eagle of May 10, 1883, in an editorial comment on Mr. Henry's interview and Mr. Henry's work in the Legislature, said:

'If Mr. Henry had accomplished no more than the reorganization of our common council, he would have a large claim upon the gratitude of his fellow-citizens. But he accomplished a good deal more. While in this direction enlarging the power of the people over a highly important branch of our municipal government, and *weakening the most vicious influences in our local politics by destroying the system of ward representation,* he was active in defense of the established system of local self government, and on the side of nearly everything worthy to be called reform.''

III. The Brooklyn Eagle of April 29, 1883, editorially said this:

'As a political measure in the broad sense, by much the most important of the session, is the bill introduced by Mr. Henry for the reorganization of the board of aldermen.

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Its purpose is to do away with the principle of ward representation. It provides for the election of four aldermen by each of the three senatorial districts and seven by the city at large, making a board of nineteen members. This is in no sense a partisan scheme. Its aim and only aim is to secure for the city the services of a better class of men than the existing methods yield. It is not doubtful that bad candidates, who succeed in passing the ordeal of ward contests, especially where the majority is large either way, would have little chance of victory in a senatorial district, and still less in the city at large. To win, good men, men respected by the considerable body of their fellow citizens, would have to be nominated. The opposition to the measure cannot be justified by anything in the true interest of either party, and no one pretends to oppose it on the grounds of public policy. Its antagonists are the gentlemen who thrive in the atmosphere of our worst ward politics. They fear the consequences of having to make their pretensions good in the light of general discussion.

If, however, the Democrats in Senate pass this measure they will do more to strengthen their party with good citizens than all the ward rounders in Brooklyn could accomplish, if they tried from now until the close of the century.

With the board reorganized as proposed, it would command and have a membership of the ablest men in Brooklyn. In that event the common council chamber would be an arena for the display of the highest qualities of citizenship. From its floor candidates would be taken for the chief municipal offices, and something like a school would be established, in which every citizen could, by attention, master the problem of our local government. In short, by the passage of this measure alone the Legislature can make itself memorable.'

Although this outlook seems exceedingly sanguine, it is a fair commentary upon it to note that from the aldermen-at-large elected since the act of 1883 became operative, one has been made supervisor-at-large of the county, having been chosen by the people at two successive elections, and one is now filling the responsible office of city treasurer.

IV. The Brooklyn Eagle, April 13, 1883, in an editorial said:

'A generation has passed away since Brooklyn has had a local legislature worthy of the city and, in fact, representative of it.

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'For very many years back our board of aldermen has been distinguished, as a whole, only for the illiteracy, stupidity and venality of its members. It is not too much to say that every intelligent citizen of Brooklyn, without regard to party, is ashamed of the record made by both parties through their representatives or adherents in the board of aldermen. The trouble with the board can be directly traced to the system of ward representation, which the city has outgrown. The party dominant in the ward ordinarily elects the alderman, and it rarely happens that a candidate selected by the ward bosses of their party fails to pull through. In a great many of the wards there is virtually no Republican opposition worth speaking of, and in an almost equal number of wards the Republicans are so clearly in the majority that the best possible Democrat has no hope of success against the worst possible candidate the Republican politicians may nominate. Even after the alderman is elected, while he is a member of a body not acting for the city as a whole, the individual members of the board cannot be held responsible to the city or to the people of any considerable portion of it. Experience has demonstrated in this city that the ward system of representation works badly, and experience also proves that the larger the constituency the better chance there is for defeating a bad candidate, for electing a good one and for not having to make a choice between evils.

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'Mr. Henry's bill, if it become a law, will restore to the board its lost dignity.

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'But it is entirely possible that the bill for the reorganization of the board of aldermen may yet be defeated, and that, when election time comes around again, the local Democratic party will find itself imbedded in the old rut.'

If these sanguine views above quoted have been brought to naught, I am by no means clear that the remedy for whatever evils now prevail is to be found in a recurrence to the system which was so severely condemned only six years ago. I have heard of no facts which would make that system more productive of public or private virtue in its operation than it was prior to 1883. On the contrary, there is much in the current political accusation of the day to lead one to an opposite conclusion. In the city of Brooklyn, side by side with its board of aldermen, there is a board of supervisors. This latter body is, and for many years has been, chosen upon the system of ward representation which this measure seeks to apply to the aldermen. If one may judge by the amount of space filled in print by charges against these two bodies, there is little or no choice between them. No one has asserted on behalf of this bill that the board of supervisors of the county of Kings is an exceptionally virtuous or admirable body. It is not easy to conceive that a board of aldermen, chosen upon the same principle, would be materially different. My own knowledge of the personal composition of either of these bodies is indirect, but such information as comes to me represents the existing board of aldermen as being neither morally, socially nor intellectually inferior to the board of supervisors. The board of aldermen in the city of New York has for several years been chosen upon substantially the same system as that which this bill would apply to the board of the city of Brooklyn. That its history within that period has been characterized by some of the most phenomenal scandals known in the annals of any municipality is a matter of common repute.

If it is sincerely desired to reform or improve the board of aldermen of the city of Brooklyn, or any similar body, there are methods by which that result may possibly be accomplished; but it is not likely to be accomplished — on the contrary, the whole history of government, municipal and otherwise, clearly proves that it will not be accomplished — by enactments which merely pass from one method of selection, or from one variety of electoral apparatus, to another, without being accompanied by the secure establishment of some working principle of tried, practical value. This measure would not accomplish any practical benefit to the city of Brooklyn, but it is a political bill, pure and simple, without any substantial merit, and it could scarcely have been expected by the Legislature that it would receive Executive approval.''

The bill was not passed over the veto.

May 6. To the Senate:

Veto of a bill entitled "An act requiring certain county treasurers to file statement of sales of lands made by them for delinquent taxes imposed thereon, and providing for the recording of such statements."

'' There now exists a special statute for the sale of lands for unpaid taxes in each of the following counties, namely, Cayuga, Chenango, Dutchess, Jefferson, Lewis, Livingston, Monroe, Montgomery, Oneida, Orleans, Oswego, Putnam and Westchester. There is one such special act for the two counties of Chautauqua and Cattaraugus. The similar statutes for Sullivan and Ulster counties have been repealed. With but two exceptions all these sixteen different statutes have been enacted within the past ten years. No two of them are alike. In every year during that period various statutes have been enacted amending one or more of these special laws, or confirming sales made thereunder.

I have this day returned to the Assembly, without my approval, Assembly bill No. 566, proposing another such special statute for the county of Wayne.

The spectacle of fourteen different special laws, with the various amendments made to each one separately, now on our statute books, making similar provision for fifteen counties similarly situated, with still another special bill knocking for admission, is a forcible commentary upon the tendency of the Legislature to pile up special laws, and indicates the endless confusion which will result unless such tendency is restrained with a firm hand.

On February nineteenth last I returned to the Assembly Assembly bill No. 14, to amend the special law upon this subject for Jefferson county, and, among other reasons therefor, I stated that ‘ the county and State taxes throughout the interior counties of the State should be collected on one uniform system, so that a citizen moving from one county to another may easily understand the laws applicable to the collection of taxes,’ and that I declined to approve that bill in the hope that such action might lead to a general statute, doing away with all special statutes for the collection of State, county and town taxes in the interior counties.

Since that time I have steadily refused to approve any bills to amend any such special laws, insisting that the special law needing amendment shall be repealed, leaving the county affected thereby to come under the provisions of the general law as at present existing, or as the same may be amended, to cure any defect or inconvenience therein.

The bill herewith returned has the appearance of such a general law, but is really an unusually aggravated form of special legislation. The bill leaves each of the present special laws untouched, and proposes in one of the minor details thereof a uniform provision for fourteen of these counties. The proposed provision is probably in conflict with each of the thirteen special laws of the fourteen counties affected. If this bill should become a law, the result would be that the county treasurer of each one of these fourteen specially affected counties, after studying out his duties under his own special county statute, would be compelled then to look to this apparently general act, and harmonize the conflicting provisions of the two. This is simply confusion worse confounded. This is not a general bill, but is a special bill for fourteen counties, each of which has a special law left, in conflict therewith. The right course is clear. If the experience of these fifteen counties has demonstrated that the general system of their special laws is more economical or convenient than the general law now in force, then the Legislature should amend the general law accordingly, and repeal all these special laws, thereby establishing a uniform system again, but with such improvements as the experience of these special counties has shown to be desirable."

The bill was not passed over the veto.

May 6. To the Senate:

Veto of a bill entitled "An act to amend chapter 523 of the Laws of 1883, entitled 'An act to amend the charter of the city of Poughkeepsie.'"

"One of the changes proposed by this bill is that the term of employment of every employe of the city of Poughkeepsie shall expire on the thirty-first day of December after his employment, unless previously removed or discharged, and with no other limit or modification except that an employe shall hold over until his successor shall have duly qualified.

This bill would prohibit all future contracts of employment by the city of Poughkeepsie of any person for a longer period than until the thirty-first day of December next thereafter. As to all such contracts heretofore made for a longer period, the bill is, of course, unconstitutional.[1] I am advised that the object of this amendment is to render ineffectual certain proceedings which have been instituted under the civil service act to reinstate certain honorably discharged Union soldiers, who have been removed by the city authorities without cause. But whether this be so or not, the proposed change carries its condemnation so palpably on its face as to need no extended reasons for my refusal to approve the bill. Under this provision even the teachers of the public schools could not be employed for a longer term than until the thirty-first day of December after their employment. Municipal reform lies in the direction of securing a more fixed and permanent, rather than a more uncertain, tenure of office. The bill contains other objectionable features, which it is not necessary to specify in detail, together with some provisions which are undoubtedly meritorious. The recent recess of the Legislature prevents the recalling of the bill for amendment, and the only course left for me is to decline to approve the bill.''

The bill was not passed over the veto.

May 6. To the Senate:

Veto of a bill entitled "An act in relation to the equalization of real estate in the county of Erie for the purpose of taxation."

'' This bill provides singly for the county of Erie, that the board of supervisors of that county shall complete their equalization on or before December first in each year.

No reason appears why Erie county needs a different provision in this respect from the other counties of the

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[1] U. S. Const. art. 1, § 10, clause 1.

State. If the proposed change is desirable for Erie county, it would seem to be equally desirable in other counties. The uniform operation of general laws should not be disturbed except for very weighty and exceptional reasons. If a change is desirable, it should be effected by amendment to the general law."

The bill was not passed over the veto.

May 6. To the Assembly:

Veto of a bill entitled "An act to amend chapter 214 of the Laws of 1888, entitled 'An act to revise the charter of the city of Binghamton.'"

"The principal amendment proposed by this bill consists in an enlargement of the boundaries of the city of Binghamton. I find, upon investigation, that there is considerable opposition to the measure. The citizens who oppose the bill requested an opportunity to be heard before the Senate committee, but such opportunity was not accorded them.

So far as I have been able to ascertain, a majority of the citizens are not anxious that the bill should become a law. It is claimed that, if the bill should be approved, about one thousand inhabitants would be added to the tenth ward of the city, and that this would make that ward twice as populous as any other in the city, yet this bill makes no provision for any division of such ward.

The active advocates of the bill seem chiefly to be those interested in real estate in the outlying districts, and there also seems to be some ground for the belief that political motives have induced the passage of the bill before me, with the hope that the additional population brought within the city limits would, perhaps, change the political complexion of the city government. Besides, if the boundaries are to be enlarged, there appears to be no good reason why the extension should not also take place in directions which, for peculiar reasons known to the promoters of the bill, have so far been omitted. The mayor of the city and other prominent citizens have filed with me a remonstrance against the bill.

No great public interest will suffer if the proposed change of city limits shall be delayed for another year, when it is probable some bill commanding a greater unanimity of public support can be introduced and passed.''

The bill was not passed over the veto.

May 6. To the Assembly:

Veto of a bill entitled "An act to enforce the collection of taxes levied in the county of Wayne."

''In my message of even date herewith to the Senate, returning, without my approval, Senate bill No. 170, I have called attention to the fact that there are already on our statute books fourteen different special laws providing in the same general way, but with almost infinite variety of detail, for fifteen counties similarly situated. This bill proposes to add to the list another special law for one more county. It is respectfully insisted that the Legislature should, instead, repeal all of the fourteen special laws now existing, and bring these fifteen counties, and all other counties similarly situated, under a uniform system to be established by one general law.

I respectfully refer the Assembly to my message to the Senate, as aforesaid, for further reasons for my disapproval of this bill.''

The bill was not passed over the veto.

May 6. To the Assembly:

Veto of a bill entitled "An act requiring the Comptroller and Superintendent of Public Instruction to adjust the accounts of the State with the several counties thereof."[30]

"Without passing upon the merits of the main object of this bill, it appears at least to be incomplete. The bill requires the Comptroller and Superintendent of Public Instruction to credit certain counties with such sums as have been charged to and paid by said counties since 1880 on account of State taxes based upon property exempted by law from local taxation for State purposes. In case the counties provided for have not refunded such of the taxes referred to as they may have improperly collected, then such counties have lost nothing, and are not entitled to the credit which this bill would give them. If the main object of the bill is meritorious, a saving clause should be added, providing that no county should be credited with any amount so collected but not refunded. The recent recess of the Legislature has prevented the recalling of the bill for amendment."

May 7. To the Senate:

Veto of a bill entitled "An act to release the right, title and interest of the people of the State of New York in and to certain real estate in the city of Elmira, county of Chemung and State of New York, to Henry Washington." [See note 27.]

"This is an ordinary escheat bill, special and private in its character. I cannot consistently approve it, for reasons fully given in my veto of Assembly bill No. 113, transmitted to the Assembly April 13, 1889, and in numerous other vetoes of a similar character.

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[30] The bill was not passed over the veto, but another bill, including the saving clause suggested by the Governor, was passed, and became a law, chapter 469, on the 13th of June.

Mr. Henry Washington, the person named in the bill, is a worthy citizen of Elmira, and has unquestionably an equitable claim to a release of the interest of the State in the premises mentioned in the bill, but his rights should be obtained under the provisions of a general bill, which I trust the Legislature will see fit to enact before its adjournment."

The bill was not passed over the veto.

May 8. To the Assembly:

Veto of a bill entitled "An act to amend sections 37 and 52 of chapter 410 of the Laws of 1882, entitled 'An act to consolidate into one act and to declare the special and local laws affecting public interests in the city of New York.'"

"The principal amendment proposed by this bill consists in legislating out of office the present police commissioners of the city of New York, and substituting in their stead a board of two commissioners, one belonging to and representing each of the two principal political parties of the State. The present board consists of four commissioners, and there is no provision of law requiring that they shall belong to any political party. Under the existing charter the board may consist of all Democrats or all Republicans, and the mayor, in making his appointments, is at liberty to select the best citizens, irrespective of political considerations.

There does not seem to be any pressing necessity for a change in the line indicated by this bill. Whether the board shall consist of four or two commissioners is, perhaps, not a vital matter, but the circumstances surrounding the passage of the measure afford some ground for the charge that it was not specially designed to serve any public interest, but that its principal object was the removal of the present commissioners from office.

There is no great principle involved in a reduction of the number of commissioners from four to two, and there has never been manifested any considerable amount of public opinion in favor of such a proposition. A single-headed commission, or a commission consisting of three persons, has often been suggested, and there are many arguments which can appropriately be urged in favor of either of such systems. A better concentration of responsibility, as well as a fairer representation of the people, might be facilitated in a single-headed or in a three-headed commission. But the present measure ignores all such considerations, and provides for a commission equally divided politically, with no power to act upon any question in case of a tie. It reduces the number of the commissioners, but otherwise perpetuates the objectionable features of the present system.

This bill (as well as the bill relating to the park commission passed simultaneously therewith) guarantees to the Republican party a permanent one-half representation in the police and park departments. It may well be questioned whether that party is entitled to any such representation. It polls usually only about one-third of the vote of that city, and it is difficult to discover why it should have a greater representation than its numerical strength fairly entitles it to.

A measure which arbitrarily removes from office officials whose terms have not expired should always be enacted with great caution, and should only be resorted to where some essential principle is necessary to be asserted in behalf of good government, or some conceded reform is to be brought about, which can be effected in no other manner.

The change proposed by this bill is not so important or desirable as to justify the summary removal of officials, and leads to the suspicion that political or factional motives have induced its presentation at this time. It is said that the bill will be productive of reform, but upon its face it is apparently designed to secure political advantage of one party over another, or of one faction over another.

It does not conclusively appear that a better administration of city affairs will be promoted by the signing of the measure, and I decline to canvass any other considerations that are urged for my approval. My views upon this, and all other bills of a similar character, were expressed in my Annual Message of 1886, as follows:*

'While desiring to co-operate with the Legislature in every honest and genuine effort to promote the cause of municipal reform, it should be stated that legislation cannot be expected to meet with Executive approval, which, although cunningly devised and artfully worded, and loudly proclaimed as reformatory in its character, yet is, in fact, designed for partisan advantage, or the mere substitution of one set of officials for another, the creation of new offices, or the re-distribution of political patronage.'

I reiterate those sentiments now. I am not the Governor of a class or a faction, or even of a party. I am the Executive of the will of the people of the whole State. I refuse to be swerved from my convictions of duty upon this, or any other bill, by unreasonable or uninformed clamor, the mere selfish interests of party or faction, the denunciations and criticisms of enemies or the blandishments and appeals of friends.

The measure is not in the public interest, and I cannot consistently approve it."

The bill was not passed over the veto.

May 8. To the Assembly:

Veto of a bill entitled "An act to amend sections 42 and 52 of chapter 410 of the Laws of 1882, entitled 'An act to consolidate into one act and to declare the special and local laws affecting public interests in the city of New York,' in relation to the appointment and salaries of the commissioners of parks."

"The reasons given in my veto of Assembly bill No. 880, returned concurrently herewith, are substantially those which compel my disapproval also of this bill. The changes proposed in each are similar in character and the general principles involved are the same, and I am, therefore, led to a like decision in both measures."

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* *Ante*, p. 161.

The bill was not passed over the veto.

May 10. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *May* 10, 1889.

"The necessity of providing some relief for New York city in the matter of rapid transit is the pressing question of the hour. The importance of the subject cannot be overestimated. Every citizen of that city understands and appreciates the situation and is looking to the Legislature for prompt and wise action. It is the greatest city upon the continent; but its prosperity, progress and development are hampered and restricted by insufficient and inadequate means of travel.

The problem of rapid transit cannot be solved without legislative action. Mere inaction is a denial of relief, and the citizens of New York, without distinction of party, implore the Legislature not to refuse them the required legislation. The local authorities of that city, with great care and entire unanimity, prepared a general and comprehensive measure, which has come to be known as the 'Mayor's rapid transit bill,' which was long since introduced in the Legislature. It met with vigorous and unexpected opposition in the Senate, but, after much delay, it finally passed that body, and is now pending in the Assembly.

It is a measure which is not claimed to be perfect, but it must be conceded that it is reasonably free from objection, and is believed to be sufficient to accomplish the purpose desired. It is admitted to be an honest measure. It has no entangling alliances with any private or corporate schemes, but has been framed absolutely in the public interest, and is supported by all the reputable newspapers of New York city, and is favored by nearly every representative in the Legislature from that city. There would seem to be no good reason why it should not be enacted. The business interests of New York city, the voice of its best citizens, the sentiments of all classes having no private interests to subserve, unite in requesting favorable consideration.

The bill can be beaten in various ways — by invoking the obstruction of parliamentary tricks and devices, by persistently delaying its progress, by refusing to advance it, by the insertion of vicious and objectionable amendments, ostensibly designed to perfect it but really intended to defeat it, by incumbering and identifying it with adverse and inconsistent personal, private and corporate schemes of doubtful propriety.

Public sentiment is aroused in regard to this matter, and the people will not be deceived by opposition of this nature. Those who are not for this meritorious measure are against it.

It should be frankly stated that the suspicion is abroad that this measure cannot be passed unless some concession of a political character shall accompany it, and the delays interposed to its progress and the circumstances surrounding its opposition have seemed to justify this suspicion. This is a reflection upon the Legislature which should be promptly removed. The bill is not a political one. Political promises or considerations should not be exacted as a condition of its passage. It is emphatically the people's bill and it should be fairly treated and honestly considered upon its merits and either passed or rejected without promises or bargainings of any kind.

Thus far it is not claimed that any improper means or influences have been invoked to aid its enactment. It is difficult to comprehend or explain why representatives from the country districts of the State, whose constituents or themselves are in no manner directly affected, refuse to favor a measure for the benefit of New York city supported by all the best citizens of New York and by all its principal newspapers; and naturally such unfriendly attitude arouses the gravest apprehensions and leads to the intimation that political or other influences have instigated such action.

It is due to the good name and fame of the Legislature that this subject should be so promptly and fairly disposed of as to merit the confidence and approval of the people.

It is practically certain that if the mayor's bill does not pass, there will be no relief afforded this year. It is to be hoped that the bill will not be defeated by inaction or indirection.

It should be clearly understood that the measure upon which I am urging action does not compel the adoption, or designate, or even indicate any particular system, or plan, or device to secure rapid transit for New York city's great and increasing population. It simply confers upon the authorities of that city the power to select some method which will give needed relief to the hundreds of thousands of those who are daily compelled to travel between their homes and their workshops or offices. The refusal of the majority of the Legislature to grant the possibility of such relief is an offense against the rights of multitudes of our most industrious citizens, which assuredly will not be condoned.

I deem it my duty to earnestly and respectfully urge the prompt consideration of the rapid transit measure now pending before you. Its passage will be hailed with approval by all good citizens, and it will reflect the greatest credit upon the present Legislature and render this session memorable for all time.[31]

DAVID B. HILL."

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[31] A rapid transit act was passed for New York in 1891, chapter 4. The act was several times amended in subsequent years, and resulted in the construction of an underground railroad, known as the subway.

May 13. To the Assembly:

Veto of a bill entitled "An act to secure more fully the independence of electors at public elections, to enforce the secrecy of the ballot, and to provide for the printing and distribution of ballots at public expense."[32]

"The evils which this bill pretends to remedy are startling, wide-spread and dangerous beyond all others which threaten our government, and it is not strange that any bill labeled 'electoral reform' raises a blind cry for its enactment. The clamor that this 'great reform measure' should be approved at once, and without stopping for an examination of its details, was at no time louder than when the bill was first presented to me by the present Legislature, so framed as to abolish all elections which it proposed to reform. That such a stupendous blunder could pass the Legislature without detection should be a sharp reminder that painstaking scrutiny and careful deliberation are as necessary as patriotic fervor. When the people are crying for bread their hunger will not be satisfied by giving them a stone.

Political parties cannot differ as to the necessity of suppressing bribery at elections. Certainly such a consummation is most devoutly to be wished by that party which is well known to have little or no campaign fund, to have less wealthy men for its candidates, and to have suffered most severely from enormous political corruption by its adversaries.

It is difficult to understand how so much party heat could have been evolved from the discussion of a measure proposing ends equally desired by all honest people, regardless of party. It can only be explained by the mad anxiety with which this bill was made a party measure by the majority of the Legislature, and by the reckless haste with which it was originally rushed through both houses, without listening to suggestions, criticisms or amendments presented by the minority, with the evident intention that the bill should not be approved, and that the Executive might thereby be placed before the people of the State in the false light of having vetoed a reform measure.

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[32] This bill was not passed over the veto, but another bill on the same general subject was passed in 1890, chapter 262, which was approved by Governor Hill. See notes 1 to 5 inclusive.

The enactment of a law which shall actually secure electoral reform should involve simply a discussion of the best means for accomplishing commonly desired ends. There would seem to be no longer any occasion for partisan controversy in this discussion, if the sole object in view is the public good, rather than digging pits for political adversaries. The present need is careful deliberation, keen scrutiny and a mutual readiness and desire to give and receive the sharpest and severest criticism, requiring a temper and disposition most foreign to the atmosphere of partisan controversy.

The first step in a discussion undertaken with such disposition is to discover the points of agreement. This I proceed to do.

There is one leading feature of this bill which I consider of vital importance, and which I have uniformly advocated whenever opportunity has offered. The feature to which I refer is the system of private booths or compartments through which each elector must pass on his way to the ballot-box. If this system stood alone, unattended by nullifying and suicidal counter provisions, I would most heartily approve this bill.

In the memorandum setting forth my reasons for disapproving the similar bill of last year, I said:*

'I would cheerfully approve a well-considered measure 'which should provide, substantially, that each elector, just 'before depositing his ballot, should enter a separate com-

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* *Ante*, p. 578.

'partment or booth provided for that purpose, where he 'can alone assort and arrange his tickets to suit himself, 'and from this compartment proceed directly to the in-'spectors, unattended by any one, and deposit his ballots.

'Such a provision, plain, simple, and easily understood, 'would tend to prevent or restrict bribery and corruption, 'as the bribers would be unable to know or determine what 'tickets had actually been voted, and would be less likely 'to attempt to improperly influence the voter. So far as 'this bill partakes of this feature it is meritorious and 'meets my approval. But it is incumbered and surrounded 'with other provisions, crude, unprecedented, unconstitu-'tional and fatally defective, which render its approval 'impossible.'

Again in my Annual Message to the present Legislature, I said:

'It is suggested that the existing election laws be 'amended by providing that a certain space extending a 'reasonable distance from the polls be set aside or reserved 'by ropes, or barriers of some kind, inside which no one 'except peace officers and one elector at a time should be 'permitted to enter, and that all electioneering should be 'done outside of such reserved space, and that each elector 'should be required to pass behind screens or within com-'partments or booths situate within such reserved space, 'and there, alone, prepare or assort his tickets, and then 'proceed directly from such place to the polls without any 'one accompanying him or any opportunity being afforded 'for discovering what ticket he votes.

'The value of such a provision consists not in *permitting* 'the elector to cast a secret ballot, but in *compelling* him 'to do so. Under such circumstances the elector is not so 'liable to be bribed, because the bribers would not be likely 'to pay their money for a vote when they cannot be positive 'which way that vote has actually been cast. The oppor-

'tunities and probabilities of corruption would thereby be 'greatly diminished, and a pure election rendered more 'certain. Such a provision, plain, simple and easily under'stood, would tend to prevent, or at least restrict, corrup'tion at the polls, and it is difficult to conceive of any rea'sonable objection thereto.'

I have thus quoted from my previous official utterances upon this subject for the purpose of indicating anew to the Legislature that there is not, and has not at any time been, any disagreement between the Legislature and the Executive upon what I regard, and upon what I believe the people regard, the most important feature of real electoral reform. The substantial disagreement between the majority of the Legislature and the Executive has been reduced to certain objections to the official ballot proposed, but not to an official ballot itself.

I am not yet convinced that any material advantage will accrue from the use of an officially printed ballot. Secret voting, which is the essence of electoral reform, can be thoroughly secured with the booth or compartment system, either by the present method of supplying ballots, or by officially printed ballots, which shall not be exclusive. The system of an exclusively official ballot I believe to be inherently defective, vicious and unconstitutional.

In my Annual Message to the present Legislature I indicated my position on this subject as follows:

'It is also suggested that it be provided that ballots for 'elections be furnished at public expense, under suitable 'and proper regulations. The necessity or wisdom of this 'change is not entirely clear, and it may well be doubted 'whether, of itself, it will prove of much benefit or be pro'ductive of any essential reform; but, having no special 'objection to it, I am disposed to recommend its adoption, 'as an experiment fairly entitled to a reasonable trial. It 'is a power which is liable to great abuse, and should be 'carefully restricted. While ballots should be furnished 'for the candidates of the principal political parties, and 'for all other parties polling a certain fair percentage of 'votes at the previous election, yet any further provision 'compelling their furnishing should be strictly guarded. 'It is not believed to be desirable, nor is it just to the 'taxpayers, that every political adventurer who desires to 'run for a public office should have his ballots printed at 'public expense, regardless of his merits, the extent of his 'following, or the motives or purposes of his candidacy. 'A mere handful of adherents, compared with the great 'body of the citizens, should not be permitted to impose a 'self-constituted candidate upon the people at public expense, simply to gratify his personal vanity or the pretensions of a small faction.

'Grave objections exist to any provisions vesting the 'exclusive power of furnishing ballots in the State, county 'or city. That power should be concurrent with parties, 'candidates and individuals. While the State, county or 'city may furnish ballots, and thereby always ensure a 'sufficient supply for the convenience of voters, and thus 'tend to relieve candidates from the necessity of large political assessments for such purpose, yet no good reason 'exists why parties, candidates or private individuals may 'not themselves be permitted voluntarily to furnish their 'own ballots in case they desire to do so. Provision should 'be made for the selection of ballot clerks, who should have 'charge of the ballots thus furnished at public expense, and 'these clerks should be stationed inside the reserved 'boundaries, behind a desk or counter, and should furnish 'the electors upon request a full set or sets of all the 'printed ballots. Electors should not, however, be obliged 'to ask or receive their ballots from such clerks, but should 'be permitted to supply themselves in advance from candidates, their friends, or in any other manner they choose, 'at their own homes or elsewhere, and being thus supplied, 'should have the privilege of casting their ballots just as 'they have prepared them, without the assistance or inter-'vention of any ballot clerks.'

These quotations disclose precisely the points of agreement and of difference between the Legislature and the Executive upon the leading features of this bill.

I am most heartily in favor of the private booth or compartment system, substantially as proposed in this bill. I am willing to try the experiment of an official ballot, printed at public expense, provided the law is not prohibitory and the ballot is substantially of the same character as the ballots now prescribed.

But the two other leading features of the bill are inherently inconsistent with the object sought by the private booth or compartment system, and are liable to absolutely defeat such object. These two features open the door to new dangers even graver than those from which the one worthy feature of the bill seeks an escape, and are clearly and beyond question unconstitutional.

The two objectionable features to which I refer are, first the requirement that none but an officially printed ballot shall, under ordinary circumstances, be voted; second, the requirement that each ticket shall contain the names of all the candidates of all the parties and parts of parties, and irresponsible combinations pretending to be a party, who choose to certify that they have made a nomination.

These two objectionable features I now proceed to consider in detail.

First. Citizens should never surrender the right to bring with them to the polls their own ballots and to see that they are properly deposited in the box.

By the bill presented last year, no ballot whatever could be voted except an officially printed ballot obtained at the polls. The very existence of elections was made to depend upon the machinery for furnishing official ballots. If that machinery were to break down at any point, thereby stopping the supply of such ballots, the election could proceed no further. The present Legislature has recognized the validity of this objection then made by the Executive, and the bill now before me provides, in section 24, that ' if from any cause, official ballots are not ready for distribution at any polling place, or if the supply of ballots should be exhausted before the polls are closed, *fac simile* unofficial ballots may be used.' In every other case the official ballot must be used. This, though not absolutely, is still practically an exclusively official ballot.

There are but two legitimate arguments in favor of an official ballot printed at public expense, as against the same kind of ballot to be furnished by parties and candidates; first, that an officially printed ballot will enable impecunious men to become candidates without being compelled to meet the expenses of printing their tickets; second, that by thus doing away with the only campaign expenses which are absolutely necessary, the excuse for levying campaign assessments upon candidates will be reduced. These two purposes can be as completely satisfied under the system of an optional official ballot as under the system of an exclusively official ballot. As to this point there can be no question.

The importance of relieving candidates from the expense of printing their tickets has been greatly exaggerated. Such expense is so slight in comparison with other legitimate expenses of an election as hardly to be recognized. The expense of the distribution of the tickets, of campaign literature, of a preliminary canvass, of public meetings, of bands of music, of torchlight processions — all strictly legitimate — vastly outweigh the mere expense of printing tickets. Contributions will still be called for from candidates and will be paid, whether denominated assessments or otherwise. It will cost the taxpayers much more to print the tickets than it will cost the candidates, and it is very doubtful whether the incidental evils will not outweigh the advantages. The cry for an official ballot has proceeded mostly from *doctrinaires* whose theories are beautiful and serene, but who have no eyes for facts and practical experience.

Nevertheless, I am entirely willing to concede, and even to recommend, the trial of an official ballot printed at public expense, so long as the law is not prohibitory, as it practically is by this bill.

But this bill defeats rather than subserves the only possible purposes of an official ballot printed at public expense, and would actually increase the expenses to candidates of printing their own tickets.

The bill does not provide when the county clerks shall distribute the official ballots to the inspectors of election at the polling places, except that it shall be done before the opening of the polls and at the polling places. In the city of New York there are 856 election districts. The official ballots cannot be delivered to the inspectors until the latter are present at the polls, and must be delivered before the polls open. The ballots must all be delivered at or about the same time. In New York city this would require nearly 856 messengers. Suppose one of these messengers is delayed unavoidably or purposely. The only remedy provided by this bill is the provision in section 24 for the use of *fac simile* unofficial ballots as above quoted. In many of the interior counties delays will be much more likely to occur. The theory of the bill is that the official ballots are to be retained by each county clerk until the morning of election. Many of the polling places in these counties are at a considerable distance from the county clerk's office, inaccessible by railroad. It is evident, without further elaboration, that delays are very liable to occur in transmitting the official ballots from the county clerks' offices to the polling places.

No political party would dare to take the risk of such delays, but each party would be practically compelled to prepare and distribute in every election district a full supply of these *fac simile* unofficial ballots, at its own expense. But in so doing each party would be compelled to print *fac simile* ballots containing not only the names of its own candidates, but also the names of all the other candidates of all the other parties, as required upon the official ballots. The expense to candidates of printing their tickets would be more than doubled by the official ballot system of this bill. The very evils sought to be reduced by the official ballot would actually be increased. The defect is inherent in the exclusively official ballot system, and cannot be obviated while that system is retained.

The only other point ever urged in favor of an exclusively official ballot is that it will promote the secrecy of the ballot, and will make it more difficult for the vote-buyer to know whether his man has voted as he was bought. I believe that in actual practice this system will work just the opposite result.

To render it absolutely certain that no other than an official ballot shall be voted, the ballot required by this bill is to be marked with the initials of the election officers who originally deliver it to the voter. The voter is not thereafter to leave the polling place until he has deposited the ballot with the initials thereon exposed. This scheme has a very plausible appearance, and has deceived many into the belief that it insures absolute secrecy, except for the word of the voter. The bill of last year provided that the initials of the election officers should be indorsed on the back of the ballot itself. I then pointed out that this system could be easily used, by collusion with an election officer, to absolutely identify the ballot of any voter, and that it was inherently unconstitutional for that and other reasons. Those objections are sought to be obviated in the present bill, by transferring the initials from the ballot itself to a stub, attached to the ballot when it is delivered to the voter, and to be detached when the ballot is deposited. But still, by collusion with a ballot clerk and an inspector who may both be of the same political party, the vote-buyer may obtain a ballot with the stub properly marked, and a system can then be readily devised, which it is not necessary here to elaborate, by which the vote-buyer can determine on the spot exactly how his man voted, with even closer accuracy than if he had followed him to the ballot-box and had stood at his elbow when the ballot was deposited. This bill contains no express prohibition against such delivery of a ballot so marked, before election day, and provides no penalty therefor.

This particular bill, indeed, ruins even the plausibility of the system, and makes it easy for the vote-buyer to obtain the marked official ballots without any collusion with election officers. Section 23 of the bill provides that 'each 'qualified elector shall be entitled to receive from the said 'clerks one ballot for each of the officers for which the 'elector desires to vote.' The bill provides also that the different tickets are to be classified as at present. Each elector would, therefore, under this bill be entitled to receive from the ballot-clerks as many State tickets, for instance, as there are officers named thereon, each ticket having the stub indorsed with the proper initials. Each elector would receive an average of from three to six times as many ballots as he would be entitled to deposit. It is true that the bill requires that all ballots not voted shall be delivered back to the inspectors, and that no ballot shall be removed from the polling place. But it is very evident, with all this multitude and confusion of tickets in his hands, that it would be very easy for an elector, under claim of having dropped or lost a ticket, or by other methods, to smuggle away from the polling place a complete set of tickets marked with the proper initials of the election officials. Armed with this one set of tickets which the vote-buyer can mark and deliver to a purchased voter, who can vote the same and return another set, a complete system of purchasing votes with absolute certainty can be carried on during the balance of the day. This, it is true, is a defect of this particular bill, rather than of the system itself. But that is all the more a reason why this particular bill should not be approved. The system itself ought not, of course, to be adjudged by this botched misrepresentation of it.

But the system itself of marked official ballots is a delusion and a snare, fraught with dangers. The vote-buyers are as shrewd as the law-makers, and will, if possible, use the very devices intended to thwart them, for the more secure accomplishment of their ends. The marked official ballot, unwittingly it may be, plays most effectually into the hands of the corruptionists. This difficulty is inherent in the system of exclusively official ballots, and no ingenuity of the Legislature can successfully guard against the dangers of the system.

The most serious practical objection to the exclusively official ballot still remains to be considered.

An official ballot must, from the nature of the case, be finally completed a certain number of days before the election. By the bill of last year, this period was fixed at twenty days before election for State offices and offices for a district greater than a county, and at fifteen days before election for other offices. I then suggested that there was no method of removing from the ballot the name of a candidate for a State office who should die or resign within twenty days before election, or of a candidate for a county office who should die or resign within fifteen days before election. The printed official ballot would still contain the name of the dead or resigned candidate only, for such office, and no other ballot could be used. The present bill has merely diminished the objection without removing it. For all offices the period is reduced to eight days before election; otherwise the situation remains unchanged. If a candidate should die or resign at any time during the eight days before election, both the official and the *fac simile* unofficial ballots would contain only the name of the dead or resigned man as the candidate of the party for that office, and no other name could be printed upon the ticket in his place. This is conceded by the promoters of this bill to be its effect. The only answer is that the bill allows another name to be pasted over or written above the name of the deceased or resigned candidate by the voter. Theoretically, this would appear to be a remedy; practically, it would be a nullity. The great mass of the people will not take the trouble to write or paste in a name. The practical result would inevitably be that the death or resignation of a candidate at any time during the period of eight days before an election would defeat his party for that office.

I am unalterably opposed to any system of elections which will prevent the people from putting candidates in nomination at any time, and voting for them by a printed ballot up to the very last moment before the closing of the polls on election day. This is an inherent right under our free institutions, which the people will never knowingly surrender.

The last objection which I shall here mention to the system of an exclusively official ballot is the most serious of all. The system, though not appearing on its face to be unconstitutional, necessarily involves unconstitutional provisions. By this bill, the possibility of any ballot whatever is made to depend upon previous nominations duly certified by the bodies making the same. If no nominations are made, no official ballots, and consequently no *fac simile* unofficial ballots, can be prepared, and no election can be held; for this bill allows no other ballots to be voted. The right of suffrage and the existence of elections are both made absolutely dependent upon previous nominations. If no such nominations should be made, all the people of the

State would be disfranchised. It is not enough to say that such an event is not likely to happen. A bill which makes the right to vote depend upon irresponsible voluntary bodies, thereby making the disfranchisement of all the people possible, is equally unconstitutional, whether such event be probable or not. This result proceeds not from special defects of this particular bill, but is inherent in the very theory of an exclusively official ballot upon which the bill is framed.

Second. The second of the two objectionable features of this bill, upon which the majority of the Legislature and the Executive remain at variance, is the series of provisions requiring the names of all candidates of all political parties, as well as the names of the candidates of various combinations of persons not claiming to be a party, to be printed on one ticket so that every ballot which goes into the ballot-box will contain without erasure the names of all the candidates which the elector desires to vote against, as well as the names of the candidates whom he desires to vote for.

Out of all the names thus appearing upon the ballot, the elector is required to select and 'mark a cross before 'or after the name of the person or persons for whom he 'intends to vote—for example, ×. Provided, however, 'that any elector who desires to vote for an entire group 'may mark a cross as above described against the political 'designation of such group, and shall then be deemed to 'have voted for all persons named in such group, whose 'names shall not have been erased.'

This new-fangled style of ballot I believe to be cumbersome, expensive, impracticable and unconstitutional.

This official ballot is to be made up by the officer preparing it on the basis of certificates signed by the presiding officer and secretary of the convention or primary meeting of a political party, and by certificates of a certain percentage of voters not representing any party, which need not be more than 500 for a State nomination nor more than fifty for any other office.

No provision is made for determining the claims of contesting candidates, both claiming to be the regular party nominees.

A convention or primary meeting is defined by the bill as 'an organized assemblage of electors or delegates '*representing* a political party.' The certificate of nomination need state only 'the name of each person nominated, 'his address and the office for which he is named, and 'in not more than five words the party or principles which 'the convention represents.' The certificate must be signed by the presiding officer and secretary of the convention or primary meeting, and be verified by their oaths that 'the statements therein contained are true to 'the best of their 'knowledge or belief.'

These certificates are final and conclusive upon the officers charged with preparing the ballots. No public officers are given any authority or discretion to go behind these certificates to inquire into the truth of the statements therein or the good faith of the signers thereof. The certificate need make no statement as to the number attending the 'organized assemblage of electors' constituting the convention or primary meeting, their authority or credentials, but only that they '*represented*' the party. It would seem perfectly safe for any three or more members of any party to assemble and organize, claim to represent the party, make nominations and certify under oath that they 'represented' the party. Either party could easily procure an unlimited number of certificates to be thus issued by members of the opposite party and could load down the opposite party's list of candidates for each office on this wonderful ticket with a multitude of names so confusing to the ordinary voter as to insure the defeat of the opposite party.

There is no method allowed for distinguishing upon the ballot under a party heading, the regular from the bolting nominees, the genuine from the spurious. Add to these unlimited lists of ' party ' candidates, the candidates who may be nominated by the combinations of ' fifties ' and ' five hundreds,' not claiming to represent any party, and the limit to the names which may lawfully be placed on this ' reform ballot ' defies computation and is to be estimated by the imagination only. An ordinary city directory might as well be handed to a voter from which to select his candidate, as a ticket which might easily be constructed strictly in accordance with the provisions of this bill. Indeed, the city directory would have a certain advantage, for there the names would be arranged in alphabetical order.

The opportunities for free advertising would be immense, for the tickets are to be furnished not alone at the polls on election day. Section eleven of this bill is worthy of being presented in full in this connection. It reads as follows:

' § 11. The county clerk of each county shall at least six ' days before election day send to the town clerk of each ' town and to the alderman of each ward in a city therein, ' printed lists, *one or more* copies for each election district ' in such town or ward, containing the name, residence, ' *business, business address,* and party or political designation of each candidate nominated as hereinbefore provided to be voted for by the electors of the respective ' towns and wards. *Such lists* shall be conspicuously ' posted by such town clerk or alderman in one or more ' public places in each election district of each town or ' ward.'

Only fifty, and possibly less, signatures would be required to obtain this extensive circulation of any man's *full business card* at the expense of the taxpayers. How many lists are to be so posted? One or more, as many as the county clerk may choose to send, and ' such *lists* shall be conspicuously posted in each election district.' The number is not limited to one or to three in each district, or to any other number.

And finally, by section 10 of this act, at least six days before an election the county clerk of each county shall cause to be published in not less than two nor more than four newspapers within the county, daily in counties where daily newspapers are published, the nominations certified to him under the provisions of this act.

The suspicion is justified that some of the publishers of the newspapers which have sounded the praises of this bill have really read its provisions. That from three to six times as many ballots as he is entitled to vote should be handed to each elector would seem to be consistent with these provisions of this bill, however inconsistent it may be with the provisions professedly aimed at the secrecy of the ballot. Certainly the taxpayers would have some heavy printers' bills to pay if this bill should become a law; for all this printing, it should be borne in mind, is at the public expense. It is most charitable to the intelligence of the advocates of this bill to believe that they intended that it should not be approved by the Executive.

It is claimed that the system has worked well in other countries and has been adopted by other States in this country.

So far as I have been able to learn after a somewhat careful inquiry, the fact is that in England, Canada and Australia, where the system has been in operation, the voter at an election is ordinarily called upon to designate his choice of a candidate for but one office, namely, member of Parliament or Legislature. There is, therefore, but one ballot, and that a small one, with rarely more than two or three names upon it, and but one office to be filled. The system may be adapted to an election so simple as that, but the greatest care should be exercised in attempting to engraft that system upon our own, which is now so complicated.

This system has been adopted in but a few States, possibly five or six at this writing. So far as I have been able to ascertain, more States have rejected it than have adopted it. In no State which has adopted this system of printing the names of all candidates on one ticket, has the system yet been tried. The only actual trial of the experiment in this country has been in a single municipal election in the city of Louisville, with the result, as I am informed, of throwing out a large number of imperfect ballots.

The present system of printing ballots is simple. The people have been long accustomed to it. The proposed system is an innovation, revolutionary, cumbrous, misleading, inconvenient, and absolutely useless.

The system itself is inherently unconstitutional apart from the form in which it appears in this particular bill.

The constitutional right to vote a ballot containing the names and only the names of those for whom the elector desires to vote has existed in this State for over sixty years. Electors cannot be divested of this right in any other way than by an amendment to the Constitution. Section 4 of article II of the second Constitution of this State, framed by a convention that sat in Albany and completed its labors on the 10th of November, 1821, and which went into operation on the last day of the following year, provided as follows: 'All elections by the citizens shall 'be by ballot, except for such town officers as may by law 'be directed to be otherwise chosen.'

Section 5 of article II of the Constitution of 1846, which is now in force, contains exactly the same language. What is a ballot? It is alluded to in paragraph VI of the first Constitution of this State, which was adopted in 1777, during the Revolutionary war. Power was given to the Legislature, after the war was ended, to pass laws providing for elections by ballot. It was further provided:

'That if, after a full and fair experiment shall be made of voting by ballot aforesaid, the same shall be found less conducive to the safety or interest of the State than the method of voting *viva voce,* it shall be lawful and constitutional for the Legislature to abolish the same.'

From that day to this the meaning of the term 'ballot' has been the same. Suppose that immediately after the adoption of the Constitution of 1821 the courts had been called upon to adjudicate upon the meaning of the word 'ballot,' they would have defined its meaning precisely as it exists at the present time. It is a canon of interpretation applicable to constitutional as well as statutory law that 'the common usage of the words at the time of the enactment is the true criterion by which to determine their meaning.' (Smith's Commentaries on Statute and Constitutional Law, p. 630.) There was but one meaning which by common usage could be given to the term 'ballot.' It was that which the Legislature afterwards incorporated in a statutory enactment. Section 8, article 2, title 4, chapter 6, part 1 of the Revised Statutes defines the word 'ballot' as follows:

'The ballot shall be a paper ticket, which shall contain written or printed, or partly written or partly printed, the names of the persons for whom the elector intends to vote, and shall designate the office to which each person, so named, is intended by him to be chosen.'*

At the time of the framing of the Constitution of 1846, the meaning of the word 'ballot' had been established by common usage since the adoption of our first Constitution in 1777. Its meaning was embodied in a statute which had been in force some sixteen years. The language of the Constitution — 'All elections shall be by ballot' — referred to the kind of ballots then in use, the definition of which was contained in the Revised Statutes. The constitutional provision embraced exactly this definition, the same as if it had contained the very language of the Revised Statutes which I have cited. The Constitution says, the 'ballot' shall contain the names of the persons for whom the elector intends to vote. By necessary implication the Constitution says the ballots shall contain no other names. According to this bill, the ballot must contain the names of all the candidates for whom the elector does not desire to vote. If the Legislature can compel an elector to lose his vote, or to vote a ballot containing the names of those he desires to vote against, it has the power to require anything else to be printed on the ballots, for example, some of the political maxims of the party to which the voter is opposed. It might just as well direct that the 'ballot' shall contain brief extracts from the resolutions and platforms adopted by political conventions of the opposite party.

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* See 1890, *post* p. 913, for a note on early statutes relating to the use of the ballot.

A distinguished jurist has tersely set forth the unconstitutionality of this system in the following language:

'The system of voting provided for in this bill is not 'voting within the meaning of the Constitution. The 'elector has a right guaranteed by the Constitution to vote 'a ballot which on its face shall express, *in the English 'language,* exactly what he means. The vital part of the 'ballot which under this bill the elector must vote, is not 'in the English language at all, it consists of a cross — two 'marks made with a pen or pencil. The elector is com'pelled to vote a ballot which on its face is in favor of 'those against whom he wants to vote, and against those 'for whom he desires to cast his ballot. Take the case of 'a ballot containing only two groups of candidates nomi'nated, respectively, by regular conventions of the Repub'lican and Democratic parties. The Republican desires to 'vote for the candidates of his own party; he is required to 'make a cross against their names, which to the ordinary 'mind means that such names are crossed off. The names 'of the Democratic candidates will have no cross against 'them. So that the Republican on the face of his ballot 'votes the Democratic ticket. And the Democrat, under 'the like circumstances, on the face of his ballot votes the 'Republican ticket. The Legislature has no more constitutional power to require that an elector shall define by a 'cross what his ballot means than it would have to say 'that he should explain the meaning of his ballot by the 'use of Egyptian hieroglyphics.'

It will thus be seen that of the three leading features of this bill I am as heartily in favor of one as I am strenuously opposed to the other two; that my opposition to the two objectionable features of this bill are fundamental and based upon principle, rather than upon any technical or incidental defects or inconsistencies in the form in which they are presented in this particular bill. If these two objectionable features were unimportant or not likely to produce serious evils, I would gladly waive them.

I trust I have satisfied all honest-minded men that the benefits which might be derived from the workings of the one valuable feature of this bill would be thwarted, lost and destroyed by the operation of the two objectionable features with which it is associated, and that greater dangers would await us if this bill should become a law than those which it is sought to remedy. There is one thing worse than the bribery of dishonest voters, and that is the practical disfranchisement of a greater number of honest voters.

But whether I have satisfied others or not, my own deliberate judgment is that the net result of this bill would be evil, and evil only, to the people of this State, so long as these two objectionable features are retained, even though all the special defects and inconsistencies with which they are accompanied in this particular bill were removed. I have been thus careful to distinguish the incidental from the essential defects of this bill, that there may be no misapprehension of my position by the Legislature, in the hope that the concededly valuable feature of the bill upon which the Legislature and the Executive are agreed, may yet be adopted by the Legislature during its present session.

Having thus emphasized the fundamental reasons for my refusal to approve the bill, it is proper for me to add that the incidental defects and inconsistencies of this particular bill would compel me to withhold my approval from the bill in its present form, even if I approved all its main features.

Only a small portion of such defects and inconsistencies have been incidentally indicated in the foregoing discussion of the main features. I shall only allude to a few out of many other such defects, which form no proper part of the theories upon which the bill is framed, and which I will charitably assume were the result of haste, inadvertence or the absence of due consideration on the part of its framers. Many of these defects I pointed out in the similar bill of last year.

It has been diligently asserted that the objections made by me to the bill of last year have been obviated. This is not true. A few alterations, which could not well be resisted, have been assented to, but in the main this bill is substantially the same as the one of last year and contains all its principal defects. Instead of my objections having been obviated, in some respects they have been aggravated. I objected because three per cent. of the vote cast at a previous election was made a sufficient basis for the printing of ballots throughout the State in behalf of a party obtaining that percentage. The objection was met, not by increasing the percentage but by reducing it. One per cent. is made sufficient by this bill, and there are no additional safeguards furnished. I objected to last year's bill because it permitted any one thousand electors, by signing a petition, to place in nomination candidates for

State officers, and compelled their tickets to be printed at public expense. Instead of increasing the number requisite for such purpose it reduced it to five hundred and imposed no restrictions whatever for the protection of the public.

Last year's bill required at least one hundred persons to unite in a petition for the presentation of candidates in municipalities or districts less than the State in order to entitle them to have their tickets printed at public expense. I then suggested that this limit should be increased, but, on the contrary, in this bill the limit is reduced to fifty, and no conditions are imposed to prevent imposition upon the people and the taxpayers.

I objected to the bill of last year because it made the expense of printing and distributing all ballots a county charge, insisting that the expense of a municipal election should be a charge upon the municipality. The validity of this suggestion seems to have been recognized, but the attempt to meet it has been but partially successful, for by this bill such expenses for city elections are made a city charge, but for village and town elections such expenses are still made a county charge. After this bill was recalled from the Executive by the present Legislature for amendment, an offer to correct this inconsistency was rejected by the majority in the Senate, apparently for no other reason than that it originated with the minority.

I suggested last year that in the selection of ballot clerks, — the new election officers proposed,— a third party be recognized. This suggestion is ignored in the present bill, and even an amendment offered by a representative of the minority in the Assembly after the recall of the present bill, which would render it certain that the two ballot clerks should belong to opposite political parties, was rejected by the majority.

I suggested last year that the inordinate power given to county clerks and election officers should be limited or more carefully guarded, but that suggestion has passed unheeded. This objection brings up one of the greatest dangers of the present bill. The bill confers vastly increased powers upon county clerks and election officers and thus increases both their ability and their temptation to commit frauds. The bill proceeds on the theory that electors can be bribed only so long as they hold no office, and that they become transformed upon taking an official oath.

Under this bill it would be easier and safer to bribe some of the inspectors or ballot clerks than it now is to bribe electors. It would require less skill, less money and much less risk of punishment to place a few corrupt men in office as inspectors or ballot clerks, and through them procure the disfranchisement of a thousand honest voters, than now to obtain by bribery of electors one-tenth part of that number of votes.

But why attempt to exhaust the list?

I have called attention to these minor defects not because I consider them fatal to the bill, nor because I insist upon their amendment as a condition of approving the bill, but as indicating the same absence of care and consideration in the main features of the bill, which has characterized the minor details.

It may have been noticed already by the Legislature that this message has not been merely critical. I have aimed not to destroy, but to construct an actually workable system for the reform of election abuses. I have not been unmindful of the dangers to the State from such abuses, nor of the efforts of the Legislature to grapple with the problem of their reform.

It is made my duty, by the Constitution, to recommend such matters to the Legislature as I shall deem expedient.[k] In the line of that duty I take this occasion to recommend to the Legislature the passage of a bill before the adjournment of the present session, embodying those features of electoral reform upon which the Legislature and the Executive are in entire accord. It is for that reason that I have hastened to transmit this message to the Assembly this evening, the bill having only been presented to me on Saturday afternoon last.

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[k] Const. 1846, art. 4, § 4.

My regret in being unable to save from the wreck of this unwise and unfortunate bill, the one valuable feature it contains, is tempered by my knowledge of the fact that there is already pending in the Legislature a carefully prepared bill, known as the 'Linson bill,' providing for the private booth or compartment system, substantially as in the bill now before me, and which has become known as the 'Saxton bill,' and with few, if any, of the objectionable features of the latter. The 'Linson bill' also provides that ballots in the form now in use shall be printed and distributed at the public expense, thereby avoiding, to a greater extent than the 'Saxton bill,' the necessity and excuse for assessing candidates for that purpose, and equally with the 'Saxton bill' enabling impecunious men to become candidates without any expense whatever.

The expense to the taxpayers of printing the official ballot of the ordinary form under the 'Linson bill' will be moderate and can be limited. The expense to the taxpayers of printing the extraordinary form of official ballot under the 'Saxton bill' will be necessarily heavy, and has no computable limit. The 'Linson bill' allows political parties and their candidates to print and distribute their own tickets, as at present, if they choose, but in no way increases the expense thereof.

The 'Saxton bill' permits, and practically requires parties and candidates to print tickets and greatly increases the expense thereof, because of the uniform ticket required for all parties, and the unlimited number of candidates liable to be named thereon.

The 'Linson bill' allows any elector to prepare his ticket at home or elsewhere, with the assistance of relatives and friends, or alone without interference or suggestion, and to carry it to the polls in his 'vest pocket' or otherwise, and to deposit it as he has prepared it.

The 'Saxton bill' in its ordinary workings, prohibits every elector from voting a ticket which he has brought with him to the polls, but compels him to first obtain his ticket after he has entered within the polling place. There are other features of the 'Linson bill' which are wholly absent from the 'Saxton bill.'

The most important of all, are the requirements in sections 36 and 37, that every candidate shall, within ten days after election, file 'a statement subscribed and verified by 'by him, showing, in detail, all the moneys contributed or 'expended by him directly or indirectly, in person or by 'his authority or direction, in aid of his election and giv- 'ing the specific nature and purpose of the disbursements 'made;' and that any candidate may bring an action to vacate the office of his successful rival, if he can satisfy the court that at the election at which such rival was elected, votes were secured by such rival or by his agent or agents, or by some committee or organization of his political party, or by the agent or agents of some such committee or organization, by paying, contributing, offering or promising to contribute money or any valuable thing, or by some promise to influence the giving of such vote or votes, or that votes were withheld from such defeated party by reason of such practices, by or on behalf of such successful rival, or such agent, committee or organization.

I believe that these provisions of the 'Linson bill,' which are wholly absent from the 'Saxton bill,' will be more effective than even the private booth or compartment system to prevent bribery at elections. That is at best a mere palliative. These provisions strike at the root and source of the evil. These provisions, for the first time, would give a motive for prosecuting, the absence of which seems to be the chief reason why the present laws against bribery at elections are not enforced. Juries would be much more likely to find a verdict ousting a corrupt in favor of an honest man, than to find a verdict of guilty of crime. The candidate who detects his rival in corrupt practices may abandon his own canvass, and even though he gets but one vote, can oust his successful rival if he can show that his rival, or his rival's party, was instrumental in purchasing a single vote.

It was the unseating of one or two members of Parliament in England under a similar law, which did more to purify elections in that country than all other laws combined.

The 'Linson bill' contains also provisions prohibiting the use of 'pay envelopes,' intimidation or undue influence of employes by employers, and requiring employers to give employes leave of absence to vote without deduction of wages.

None of these provisions are contained in the 'Saxton bill.' The 'Linson bill' should probably be perfected in one or two particulars where it has inadvertently adopted objectionable features of the 'Saxton bill,' relating to nominations.

I most earnestly and respectfully recommend to the Legislature the passage of the 'Linson bill.' If, however, any of its provisions not contained in the 'Saxton bill' are objectionable to the majority of the Legislature, I shall not insist upon them. If the provision for filing statements of election expenses is objectionable, that section may be struck out. If the provisions for an action to vacate an office secured by corruption are objectionable, these sections may be struck out.

If the prohibition of 'pay envelopes' is objectionable that may be struck out. If the provisions prohibiting intimidation and inducements by employers and deduction of lost time while absent to vote are objectionable, these sections may be struck out. If the provisions for an optional official ballot are objectionable, they may be struck out. Then there will be left the provisions for the private booth or compartment system upon which both bills agree. If the name 'Linson' is still objectionable, that may be struck out and 'Saxton' substituted. Under whatever name enacted, the private booth or compartment system will be alone sufficient to make the most important bill of the session. The course I recommend has been substantially or in part recommended by the Union League Club of New York city, a social and political club held in high esteem by the majority of the Legislature.

The 'Saxton bill' in the form in which it is presented to me is an impossibility. It is equally impossible whether approved or disapproved. It grasps beyond the Constitution after the unattainable, and returns empty-handed. Macaulay well says: 'An acre in Middlesex is better than a principality in Utopia. The smallest actual good is better than the most magnificent promises of impossibilities.' Another writer has said: 'There is a certain class of reformers who attempt too much, and in so attempting defeat their own end and injure the cause they would benefit.' If I should approve this bill, so many of its provisions would be null and void under the Constitution, so many other provisions would be conflicting, and so many others absolutely unworkable, that the confusion, expense and litigation which would result would so disgust the people with the name of ballot reform, as to set back real progress for years afterward. If I should approve this bill, the just condemnation which I would receive after an experience of its evils in the next election, would be much more severe than any criticism which I may now possibly receive from those who will not read carefully either the bill itself, or the reasons which I have given for my action. I am not opposed to ballot reform, but I am opposed to the ballot destruction which this bill would accomplish. I am not opposed to an official ballot, but I am opposed to the conflicting, expensive, confusing, disfranchising and unconstitutional official ballot proposed by this bill. The reasons for refusing to approve this bill are so clear and convincing that I would do violence to my sense of official responsibility if I should yield my own judgment, and act otherwise than in accordance with my convictions.

I respectfully and earnestly recommend the Legislature to enact during the present session a bill embodying, at least, those provisions which the Legislature and the Executive agree will tend to reduce the evils of a political corruption."

May 15. To the Senate: Transmitting the annual report of pardons, commutations and reprieves.

May 16. The Legislature adjourned without day.

MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

March 20.

Memorandum filed with Assembly bill, chap. 73, to incorporate the Isabella Heimath. Approved.

"The objects of the corporation sought to be created by this bill are to establish and maintain a home for aged indigent persons, a hospital for chronic invalids, and a dispensary for the benefit of the inmates of said home and hospital.

A general bill for the incorporation of hospitals and similar institutions is now pending in the Legislature, which will, if it shall become a law, render further special legislation for such purposes unnecessary. The combination of objects proposed by this bill is exceptional, and could not, perhaps, be fully attained under the proposed general law. In view, moreover, of the very commendable purposes of this bill, I have deemed it unwise to delay their accomplishment to await the modification and passage of the general bill referred to. But, in approving this bill, I respectfully suggest that no further special laws should be enacted for the incorporation of ordinary hospitals or similar institutions which might be incorporated under an appropriate general law."

April 8.

Memorandum filed with Assembly bill chap. 114, amending the charter of the City of Albany. Approved.

"*First.* This act is not special legislation. It is not a special act at all, but an amendment to the charter of the city of Albany. It relates not to a particular street, but to a class of streets. Its provisions may be exceptional and unusual in their character, but that does not render the measure liable to the objection of special legislation.

Second. The provisions of the bill are not mandatory. No street is directed or required to be paved, but the propriety of any paving is left to the discretion of the local legislature of the city.

Third. The bill has the approval of the mayor, the corporation counsel and all the local authorities.

Fourth. The bill was approved by all the representatives of Albany city and county in the Legislature, and was passed with substantial unanimity.

Fifth. Public sentiment seems to favor the bill. No one objects to it except a portion of those who will be pecuniarily affected by it. The necessity for repaving State street admits of no discussion. The good name and reputation of the city require it. Albany is the capital city of the State, and it may be urged, with considerable propriety, that the owners of property on the principal streets leading to the Capitol should not alone be consulted in reference to the propriety of their repavement, but that a discretionary power should be vested in the common council. Until recently Albany has been the worst paved city in the country, and this fact may have had its influence in inducing the present legislation.

Sixth. Some of the owners of property on the streets affected make the objection that they ought to have the same 'five year credit' which it has been customary recently to allow in respect to other streets — notably, Delaware and Clinton avenues. This objection is not without some merit. I am advised, however, that there is already a bill before the Legislature providing for such extension of credit in regard to certain other streets, which bill is likely to be passed, and the last clause of this bill makes such provisions applicable to the streets repaved under this bill. It is therefore proposed by the local authorities to cure this objection, and there can be no reasonable doubt that they will do so in good faith.

Under all the circumstances, I do not discover any good reason why I should refuse my approval of this measure."

April 15.

Memorandum filed with Senate bill, chap. 137, to transfer control of teachers' classes from the Regents to the Superintendent of Public Instruction. Approved.

"The instruction of teachers' classes in the academies and union schools is strictly normal school work, the purpose being that these classes of pupils shall receive such instruction and training in methods of teaching as will qualify them for successful work as teachers in the common or public free schools of the State. This is precisely the purpose for which the normal schools were organized and have been maintained for many years at a large annual expense by the State. This normal school system having been adopted, the Legislature wisely placed those institutions under the supervision of the Superintendent of Public

Instruction, who, under the laws establishing and regulating our free school system, has the immediate supervision of all the public schools and the teachers employed therein, and is invested with all the statutory powers and facilities necessary for the practical and efficient accomplishment of the important duties thus imposed upon him. In furtherance of the educational interests of the State, this bill might well have been passed years ago. It is in line with, and carries out in part, the recommendation made in my annual message transmitted to the Legislature January 5, 1886, in which I reviewed, with some particularity, the history, powers and duties of the Board of Regents and expressed the following opinion:*

'I think there is no necessity for the official existence of the Board of Regents. Its corporative name is deceptive and misleading. Its powers and duties can be intrusted to other and appropriate hands without detriment to the public interests, thereby saving to the State the annual expense of its maintenance and dispensing with the anomaly of a two-headed educational system and the confusion of a divided and sometimes conflicting superintendence in the same public schools.'

And, in conclusion, I made a recommendation in the following words:

'I recommend that the Board of Regents be abolished; that its powers and duties relating to the schools be transferred to the Department of Public Instruction, and that its other powers and duties necessary to be provided for be transferred to other appropriate departments and offices already established and maintained by the State.'

It is trusted that in good time the other suggestions of the Executive upon educational matters, made in various annual messages, may receive that consideration to which they are clearly entitled."

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* *Ante*, p. 170.

April 22.

Memorandum filed with Senate bill, chap. 171, to legalize legislative printing bills in the Bloomingdale Asylum investigation, which became a law without the Governor's approval.

"This bill confirms and legalizes the printing done under twenty-three separate concurrent resolutions of the Senate and Assembly, and makes an appropriation of $28,988.48 to pay for such printing.

It appears that certain committees of the Legislature, without authority and apparently in violation of the statutes of the State, have ordered, and that the Legislature or these committees have received the printing named in this bill. At the earnest solicitation of some of the leading members of the Legislature of 1886, who are also prominent members of the present Legislature, and with their assurance that its enactment would prevent abuses of this character, I gave my approval, with some reluctance, to chapter 588 of the Laws of 1886. The action on the part of the Legislature, which this bill legalizes, seems, therefore, to betray a deplorable lack of knowledge of its own recent enactments, or a deliberate intent to ignore the laws of the State. If in each of these resolutions for printing it has so violated the law,—and that it has done so the passage of an act legalizing and confirming such resolutions clearly implies,—the question may well be asked how it is to be expected that the people of the State will yield any better obedience to legislative enactments than the Legislature itself.

Upon investigation, however, I find that the work herein mentioned as ordered and received by the Legislature has been executed and delivered by the Public Printer in good faith, and in the belief that the Legislature was not exceeding its powers in directing the printing of the same. I have, therefore, concluded to let this bill become a law, but, at the same time, I have notified the Public Printer that I cannot give approval to any future enactments of this character. If the Legislature wishes in the future, as it has frequently done in the past, to avoid allowing the Executive his statutory and constitutional right of passing upon such expenditures before they are made, the Legislature must hereafter be prepared to pay the same out of the exceedingly ample appropriations made for the contingent expenses of the Senate and Assembly."

May 8.

Memorandum filed with Assembly bill, chap. 269, providing four additional police justices for the city of New York. Approved.

"This bill authorizes the mayor of New York to appoint four police justices in addition to the eleven at present provided for, thus making fifteen in all. It does not legislate any official out of office. This bill is of totally different character from the bills reorganizing the police and park boards of New York city, which did not meet my approval and have to-day been vetoed. I am convinced, after careful reflection and investigation, that this is a meritorious measure and that it will promote the administration of justice. There has been no increase of police justices since about 1873 — sixteen years ago — since which time the population of the city has largely increased, being estimated to-day at quite 1,500,000. Fifteen police justices afford but one for each 100,000 of population, and this certainly cannot be deemed an excessive proportion of such officials. Even with this increase, in no other city of the State are there so few justices in proportion to the population.

In every other judicial department of the city an increase of officials has been made in some degree in keeping with the enlargement of the population. In 1873 there were but two judges of the general sessions, while now there are four. The district attorney had then but one deputy and three assistants, while now he has four deputies and six assistants, and a much increased number of clerks.

The police force has been largely increased since that time, and additional precincts established. Thus the necessity of the increase of officers charged with the administration of the criminal law to meet the additions of population has been recognized in various ways by the Legislature during recent years, and has met the approval of the people and taxpayers. It should also be remembered that in 1874 the city was enlarged by annexing a portion of Westchester county, the district so annexed being as large as Manhattan Island itself. Of the seven Senate districts in New York county, two have no police court within their boundaries.

Every citizen will admit that there should be a sufficient number of police justices and courts to secure the proper disposition of criminal cases. The record shows that during the year 1888 there were 83,617 persons arraigned at the various police courts. The startling fact is conceded that there is not on the west side of the city north of Jefferson Market any police court to which prisoners can be brought. Prisoners arrested in that district have to be conveyed across the city, and in a large part of the upper portion thereof there are not even the facilities of street railroads to afford communication between opposite sides of the city. The two northern wards of the city, containing a population of 80,000, and increasing at the rate of 8,000 *per annum,* are without a single local magistrate. No city in the country is making more rapid strides in population, wealth and resources, and the necessity for increased court facilities is becoming more pressing every hour.

These statements are facts which cannot be controverted by idle clamor or prejudiced statements. I have confidence in the judgment of the mayor of New York, and I am satisfied that he will select four additional justices who will be men skilled in the law and of such reputation for upright-ness and industry that the administration of justice will be materially aided. It is asserted, with some reason, that many cases are disposed of too rapidly, and oftentimes without that consideration to which any prisoner, whatever his station in life, is entitled. I am informed that one hundred cases have been passed upon in one hour, and that three hundred in a day is not an unusual record. Such celerity is incompatible with justice, and the belief that a remedy in some degree will be afforded by this bill has largely led me to a favorable conclusion. It is in the interest of the people and is an endeavor on the part of the civil authority to take a better care of the rights of those who, by poverty or other cause, are unable to secure an advocate to plead their case. In all civil cases justice moves with decent deliberation, as also in the higher grade of criminal offenses. In the minor offenses against the order of the community, care should assuredly be taken that injustice is not administered in consequence of undue haste in the decision of the magistrate. The present newspaper discussion of hours devoted by police justices to their duties will have served an excellent end if it admonishes those justices who are inclined to be forgetful that they are well-paid public servants, and that the people have a right to require a full day's work throughout the entire year. These justices may well remember, too, that the administration of no other branch of the law is more important than that in which they have so large a part, for their decisions affect the immediate personal welfare of hundreds of families and thousands of persons every day.

If I had thought that the purpose of this bill was only to create a few offices, useless to the people, I would not for a moment have hesitated to disapprove of it, but I am convinced that it is demanded by the best material and moral interests of a great and growing city. The additional expense is nothing as compared with the value of a proper, deliberate disposition of the multitude of cases which continually arise, and a right determination of which has incalculable influence in making a contented and law-abiding people. That I am not alone in these conclusions is evidenced by the fact that I have been urged by many prominent citizens of New York, among them some ex-mayors, to approve this bill.

When the bill was first presented to me I had some doubt about its merits, and I considered the propriety of allowing it to become a law without my signature or any expression of opinion. More careful investigation has, however, fully satisfied me that it is just and proper legislation, and I have, therefore, decided to give it my express approval by appending my signature."

THIRTY-DAY BILLS.

June 4.

Veto filed with Senate bill entitled "An act to tax sales of beverages in certain cases." [See note 16.]

"This bill, known as the 'Vedder bill,' differs materially from the measure bearing the same name, passed two years ago. Some of the objections to the original bill have been mitigated, although not obviated.* The bill in its present shape still contains certain defects inherent to the measure itself.

Two years ago the bill provided for a State tax upon licensed places in the cities of New York and Brooklyn of $400, and upon the same kind of places in the other cities of the State a tax varying from $200 to $50, and required such taxes to be paid into the State Treasury.

The bill was then vetoed principally upon two grounds:

First. The taxes imposed were not uniform throughout the State.

Second. The taxes were payable into the State Treasury, rather than into the treasury of the locality under whose authority the licenses were granted.

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* *Ante*, p. 436.

The first objection has been cured in the present bill, by making the proposed taxes uniform throughout the State, while the second objection still exists, although attempted to be partially obviated, by providing that the license taxes collected from each county, while still directed to be paid into the State Treasury, should be applied in reduction of the part or quota of State taxes assigned or required to be contributed by each county, respectively. In other words, the scheme contemplated by the bill does not permit each city, village or town respectively to have the benefit of its particular excise taxes in reduction of its share of State taxation, but places all such excise moneys collected from a given county in a common pool or fund, and a credit is given to the county at large in a reduction of its State taxes, and not to the particular city, village or town which issued the licenses.

There is no principle upon which such a scheme can be defended. My views upon this subject were expressed in my veto of two years ago, as follows:

'License taxes should properly be applied for the reduc-
'tion of local taxation. No good reason can be urged why
'one locality granting a number of licenses should be com-
'pelled to share with another locality or with the State
'at large, any of the public tax imposed on account of the
'granting of such licenses. Each locality should have the
'full and entire benefit of its own local taxation. Home
'taxation for home purposes presents the true principle.'

Again in my memorandum approving the 'Five Gallon bill' (so-called), on June 24, 1887, I said:*

'All the revenues derived from licenses — whether called
'fees or taxes, or by whatever name they may be called —
'should belong to *the localities under whose authority the*
'*licenses are granted.*"

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* *Ante*, p. 442.

I propose to adhere to the views then expressed.

This bill prevents the particular locality under whose authority licenses are granted from being the sole recipient of the taxes imposed, but requires that each city, village and town shall divide and share them with the whole county in which such municipalities are situated. There is neither sense, principle nor propriety in any such course. Why should Albany city, for instance, divide its excise revenues with Albany county, or Syracuse with Onondaga county, or Rochester with Monroe county, or Buffalo with Erie county? Why should any particular city, village or town divide its excise moneys with any other municipality or locality?

The bill violates every just principle of taxation. Licenses are not granted by counties, and counties have no control over them nor power to regulate them. Liquor taxes are local revenues, and should be permitted to be used in paying the expenses of local government in the municipality under whose particular authority the licenses are granted, and should not be appropriated for county or State purposes, any more than should fees for hack licenses, or places of amusement, or revenues received from ferries, street railroad franchises, and other municipal privileges.

Instead of diverting the local license taxes for State purposes, as provided two years ago, this bill diverts them for county purposes, and is nearly as objectionable as the first bill, and its approval becomes impossible. There was some sort of principle (wrong though it was) involved in the first bill, but the scheme proposed by this bill seems to have been resorted to without regard to any correct or just method of taxation, but solely for the purpose of having it proclaimed that there has been some legislation, no matter what it may be, relating to the excise question.

But, aside from these fatal objections, there is no necessity for any such scheme as this. The bill is not urged as a moral measure. It is not framed for the ostensible purpose of suppressing or restricting the liquor traffic, but is proposed solely as a revenue measure. Its professed object is to realize more moneys by way of taxes from the liquor traffic. It must, therefore, be treated solely as a financial measure, and judged accordingly.

If the object is simply to compel licensed places to contribute more money to the public treasury, the true remedy lies in increasing the fees charged for licenses. This can be done by the local authorities under existing excise laws in nearly every county in the State. No new legislation is needed to accomplish such purpose. There is no use of two systems or methods to accomplish a single result. If $100, $200, or any other sum is regarded as the proper amount which a licensed place should pay for a license, or can afford to pay to the public, and payment of that amount is desired to be enforced, there is no propriety in collecting one-half of it through the excise board in the shape of license fees, and the other half through the county treasurer by way of taxes.

Whatever burdens the liquor traffic should properly bear (and I am not now determining or discussing what they ought to be) they should be imposed by or through excise commissioners as a condition of granting the licenses. There should not be two systems or methods of collecting license moneys, whether such moneys are called license fees or license taxes.

This bill proposes a cumbersome, complicated, vexatious and annoying system, wholly unnecessary. All the machinery which it provides for the collection of the proposed license taxes can be dispensed with, and the expenses thereof saved to the people. The bill provides for an appropriation of $10,000 from the State treasury to pay for the books, blanks, stationery, clerk hire and other necessary expenses to inaugurate the new system. This expenditure is unnecessary, and would be simply squandering that amount of money.

The bill further authorizes an increase in the fees or allowances of all county treasurers throughout the State, by providing that they should retain, for their own use, five per cent. of the excise taxes paid into their hands.

There is no excuse for such extravagant allowances, and no propriety in furnishing a pretense for them by the methods of circumlocution contemplated by this measure. All excise revenues should be paid at one time, in one way, and into one common local municipal treasury, without unnecessary expense to the people, the creation of new offices or expenditures, or the adoption of any complicated system of procedure.

There is no public sentiment behind this bill. It is not an honest measure, designed to restrict the evils of intemperance, but was introduced and urged before the Legislature simply to retard and embarrass the proper solution of the excise question."

June 4.

Veto filed with Assembly bill entitled "An act to revise and consolidate the laws for suppressing intemperance and for regulating the sale of intoxicating liquors." [See note 16.]

" Hypocrisy is stamped upon nearly every page and line of this measure. The bill was conceived in a partisan caucus and was not honestly designed to subserve the cause of temperance, but was pressed merely as a matter of political expediency. Its insincerity is apparent, and so apparent that it is scarcely denied.

It is, however, in strict keeping with all the measures, save one, which have been passed by the Legislature during recent years upon the subject of excise. While they have been framed ostensibly for the laudable purpose of restricting and properly regulating the liquor traffic, it is clear that they have designedly been made objectionable and extreme in many features for the very purpose of preventing Executive approval.

The shameful violation of official oaths involved in such methods have not deterred the repeated adoption of them, as the history of recent proposed excise legislation conclusively demonstrates. False pretenses, unfair discriminations, the insertion of unconstitutional provisions, the omission of essential ones and the insistence upon harsh and unreasonable conditions have been resorted to in order to make certain that such proposed legislation would be rendered abortive and impossible of approval.

These serious accusations are clearly sustained by an examination of the record.

In 1887, with loud professions in favor of temperance reform, the Legislature passed an act requiring a license fee of one thousand dollars as the minimum sum for a first-class license, leaving the maximum sum which might be charged wholly unlimited; but such provisions were only made applicable to the great Democratic cities of New York and Brooklyn, all the rest of the State being exempt from its terms. The excuse put forth for this iniquitous measure was that the moral sense of the Legislature would not approve a similar bill covering the entire State. Representatives claiming to be honest and honorable men deliberately and unblushingly voted to impose upon New York and Brooklyn a license law which neither they themselves nor their constituents would tolerate for their own localities. So unjust and inequitable a bill had its defenders and apologists then, the same as the present bill has to-day, and they were equally as intolerant of criticism and impervious to reason as are the champions of this bill. The argument that excise laws should be uniform throughout the State had no merit in their eyes and fell upon unwilling ears. The suggestion that excise taxes, like all other taxes, should be equal and applicable to all alike, was repudiated as unworthy of consideration. The claim that a necessity existed for such legislation in the two cities mentioned because of the larger number of saloons in proportion to the population than in the other cities of the State was proved to be a false pretense, because it was established beyond cavil or question by the official records that the number of licensed places in those two cities was far less in proportion to their population than in any of the other cities of the State, with three exceptions.

The false arguments, the flimsy pretexts, and the preposterous claims upon which the bill was sought to be defended all fell to the ground, because they could not stand the light of investigation.

Then followed the 'Vedder Tax bill' (so-called), which was a scheme devised to tax two-thirds of the State for the benefit of about one-third. It imposed a State tax of $400 upon licensed places, and required the money to be paid into the State treasury for the benefit of the State at large, rather than to be applied to the uses of the localities where the licenses were granted.

It is unnecessary to discuss that bill, as its injustice was apparent. It violated every known principle of taxation, was only defended by the most ultra partisans and their press, and condemned by conservative citizens everywhere, as well as opposed by the independent press of the State.

Then came the 'Crosby High License bill' of 1888, a vast improvement over the one of 1887, but still unreasonable in many of its provisions. The amounts authorized therein to be demanded for licenses were regarded as exorbitant, especially in the rural districts, and in the smaller villages and towns. The measure was likewise unfair in its discriminations. It provided that from $300 to $1,000 might be required for a liquor license, while for an ale and beer license alone $400 might be insisted upon as the maximum sum. There was no sense or reason for such discrimination against the harmless beverages and in favor of spirituous liquors.

Besides, the amounts demanded for a storekeeper's license were burdensome and excessive, it requiring from storekeepers (who do not sell any beverages to be drunk upon the premises, and who as a class are most reputable tradesmen), a license fee arbitrarily fixed at from $200 to $500. The retail grocers of the State united in a protest against the bill upon this account, and there was no public sentiment asking or insisting upon any such harsh terms, and it is difficult to resist the conclusion that such provisions were inserted for the very purpose of inviting Executive disapproval.

There are two recognized methods of defeating a measure — one is by a direct and open opposition, and the other is by the insertion of objectionable amendments rendering it so defective, harsh or unreasonable as to leave no other alternative to the Executive but its disapproval. The latter course has been persistently and successfully pursued by the majority of the Legislature during the past three years, while at the same time they have been loud in their hollow professions in behalf of temperance.

The next legislation was that which pertained to the establishment of an excise commission. In 1888 I recommended to the Legislature the creation of an excise commission, composed of intelligent citizens representing both political parties and all the various interests affected, for the purpose of codifying and revising existing excise law and the presentation to the Legislature for its approval of a new and comprehensive excise law applicable to the whole State.

The Legislature acted upon this recommendation apparently in good faith, not, however, without changing the commission which had been agreed upon, and substituting in the place of two conservative citizens the names of two of its own partisans believed to be more fully in accord with the sentiments of the Legislature. Notwithstanding this substitution, and notwithstanding the fact that the commissioners were named in the bill itself (a power ordinarily conferred upon the Executive), I approved the measure, in the hope of accomplishing an honorable and fair solution of the excise question.

The commission organized and was progressing in the discharge of its duties, when the election of 1888 occurred. Immediately thereafter portions of the ultra Republican press were filled with frantic appeals to the commission, urging and demanding that no bill should be presented which lowered the 'high standard,' as it was called, for which the Republican party had contended in that election. These appeals were not without some ill effect, but nevertheless, the commission did not yield wholly to the clamor raised, and in January last submitted its report to the Legislature, whereby an excise bill, known thereafter as the 'Excise Commission bill,' was recommended. It becomes unnecessary to consider that bill in its details, because it was not adopted. It may be stated, however, that it contained many excellent provisions, and, while not wholly satisfactory, it was believed that with two or three desirable changes it could easily be made a fair and reasonable measure.

But no such measure seemed to be wanted, as immediately a tumult of disapprobation with its provisions was manifested on the part of extremists. Leading Republican newspapers denounced the bill in unmeasured terms, and characterized it as a 'base surrender' of principle, and a reflection upon the party attitude previously assumed. It was vigorously attacked by influential Republicans, among others by Hon. Noah Davis, of New York, while the late Republican candidate for Governor* himself, in a communication addressed to the Speaker of the Assembly, demanded that the bill should be rejected. Accordingly the bill was rejected. The Legislature which had created a commission, which was composed of a majority of its own political party, deliberately repudiated the result of its labors.

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* Warner Miller.

The minority in the Legislature offered to support the commission bill, if the majority would pass it, but the proposition was contemptuously voted down. Thereupon a new bill was prepared, which was agreed upon at a party caucus, and which came to be known as the 'Crosby-Davis-Curtis combination excise bill,' and this partisan bill is the one which was passed and is the one now presented for my approval. It thus appears that the majority of the Legislature did not desire to solve the excise question, but preferred to keep it as a matter for contention in party politics. Upon that majority, therefore, must rest the responsibility of a failure to secure proper excise legislation this year. Honor, good faith and fair dealing imposed upon that majority the obligation to adopt the commission bill, but, instead thereof, it was deliberately set aside.

It is now industriously sought to be impressed upon the people that the present bill does not radically differ from the commission bill. If this be so, then it was almost criminal to attempt to make unnecessary and trivial changes therein, and thereby imperil the success of the measure. If the changes made were not essential or important, then it is impossible to explain why they were insisted upon. Why was the commission bill opposed so violently at the outset, and then heartily approved when the modifications were made, if the changes were of no consequence?

The assertion that the present bill is substantially and essentially the excise commission bill is simply a bold, plain and unmitigated falsehood. The assertion is made only to cover and conceal the apparent treachery and bad faith involved in the rejection of the commission bill.

When the minority offered to support the commission bill, and actually voted for it as a substitute for the present measure, why was the substitute rejected by the majority, if the two measures were essentially alike? It is not an answer to such inconsistency to say that the majority did not propose to have the minority vote with them upon any excise legislation, but preferred that partisanship alone should control the disposition of the excise question.

The two measures are wholly unlike. The differences are vital and unreconcilable. Some sixty distinct and vital amendments were made to the commission bill, and its authors very naturally disavow the paternity of the present bill and decline to recognize it. It is substantially a new bill, representing different, as well as most extreme and narrow views. It increases the amounts required for licenses twenty-five per cent., in some instances, over those required in the commission bill.

The provisions in the commission bill for the licensing of eating-houses have been wholly omitted in this measure. The commission bill provided for the licensing of steamboats and cars. This measure contains no such provisions. The commission bill authorizes the granting of licenses to saloons to sell strong or spirituous liquors, in the various towns of the State. This measure prohibits any such licenses. The commission bill contained provisions for the granting of special licenses to incorporated associations for balls and other social entertainments after midnight, but this measure rejected all such provisions. This measure changes the qualifications necessary for the petitioners for licenses from those specified in the commission bill. The commission bill very appropriately exempted persons already holding licenses from numerous strict provisions of the act, but this measure omits nearly all such provisions. The commission bill provided a liberal, just and proper method for the transfer of licenses in certain cases, and for authorizing, under suitable restrictions and regulations, executors or administrators to operate licenses in case of the death of the licensee; but in this measure all such provisions are stricken out, and no such transfers are allowed. The commission bill retained the provisions of the existing law (Chapter 496 of the Laws of 1886) authorizing a review by the Supreme Court on a writ of *certiorari,* of the action of a board of excise where a license has been arbitrarily refused, but this measure omits all such provisions, and actually repeals the law of 1886. This measure differs materially from the commission bill in relation to the removal of excise commissioners on charges. The whole of section forty-five in the commission bill is omitted in this measure. It was a revision of an old existing statute, which was made clearer, and related to the liability of corporations which retain in their employ intemperate persons after due notice. The provisions were excellent, but they must have been stricken out in deference to the railroad corporations, which seem to have been so potential in shaping and controlling the action of the recent Legislature.

But it is unnecessary to multiply instances of the vital differences between the two measures. They are so numerous as to prevent further specification in a paper of this character, without extending it to an unreasonable length.

The two measures in their scope and effect are almost as distinct and different from each other as darkness from light. The commission bill was based upon many necessary compromises made by the commissioners, in order to effect an adjustment and harmonization of views, but in this measure the compromises which were made on one side are accepted, and those made on the other are rejected. Hence this measure is extremely illiberal, unreasonable and objectionable. It seems to be satisfactory to those who strenuously opposed the commission bill, but to no one else.

To attempt — after having deliberately rejected the commission bill — to palm this measure off upon the public as an acceptable substitute for it and one substantially like it, is a species of duplicity, deception and double-dealing worthy only of the defenders of the substitute, who have been juggling with this question for so many years.

This measure is unreasonable in its provisions, unwise in its discriminations, and unsatisfactory to the people of the State. The State election last fall was a repudiation and rejection of the illiberal and unreasonable excise measures sought to be foisted upon the State, and the fact should be recognized. The people declared in favor of a just and equitable excise law, reasonable in its provisions, and they will not be satisfied with any other.

This measure not only essentially and vitally differs from the commission bill, but it bears palpable evidence of unwise, hasty and inconsiderate preparation.

Section 16, as it now stands, is contradictory and is simply ridiculous.

Section 17 deprives saloons in cities of the right to sell lager or beer of any kind by the bottle or in quantity, a privilege which they have enjoyed for many years under the existing law, and to which no serious objection has ever been raised.

The use of wine or beer with food is a prevailing habit with a large proportion of our people, especially in New York and other large cities. A very considerable proportion of all the beer sold is drawn as required for immediate use and sold by the quart to families residing in the vicinity of the place of sale. For that reason the words 'to be drunk on *or off* the premises' were inserted in the commission bill, but in this measure the words 'or off' are stricken out, and the Legislature must, therefore, be held to intend it shall be a violation of law for a family to procure a pitcher of fresh beer for their table, unless they buy the beer by the keg and keep it on draught in their own houses — a thing impossible for the majority of persons to do.

The refusal to incorporate the eighteenth section of the commission bill into this measure is one of the worst amendments made. Every one knows that for fifteen years or more palace car companies and steamboat companies passing through the several counties of the State have been engaged in the sale of liquors to passengers. Every one knows that it will continue. The amendment is the expression of the Legislature that it prefers the traffic to be conducted in violation and defiance of the law, rather than in a lawful manner and under reasonable and proper regulations, and affording a handsome revenue. The section as drawn by the commission provides for the sale of beverages by companies running dining cars and boats, and thus enables them to accommodate the public without violating law, as they now do, and at the same time enacts stringent penalties, sure to be preventive against unlawful or unlicensed sale. It is idle to talk of temperance reform while the great corporations carrying passengers are permitted in every county to defy the law, to the evil example of more humble citizens engaged in the same business.

Section 20 of the measure, if it is expected to be enforced, will prevent any sheriff, manager or keeper of any jail, penitentiary, reformatory, house of refuge and other similar institutions from giving a glass of wine to one of his visitors or guests either in the building itself, or upon 'any grounds adjacent thereto,' without being guilty of a misdemeanor, and subjecting him to a forfeiture of his office. It must be remembered that in many, if not in the most, of the counties of the State, sheriffs and keepers of these public institutions reside in the building itself or upon 'grounds adjacent thereto.' Possibly the framers of this section did not intend to include guests, but only prisoners, but its unfortunate language includes everybody, and fitly illustrates the ignorance or stupidity of the authors of this bill.

But it is unnecessary to consider the numerous defects of this measure. Enough have been pointed out to show that its approval was scarcely to be expected.

It may be added that the druggists of the State are almost unanimously opposed to the bill, and have presented to me a remonstrance signed by about three thousand of them, protesting against its approval, and their remonstrance is also signed by over fifteen thousand citizens besides. The druggists of the State insist that the bill will prevent their sale of alcohol, wines and spirituous liquors for medicinal, sacramental and mechanical purposes under a druggist's license, and will impose upon a purchaser the trouble and expense of procuring a physician's prescription in each case requiring the use of these articles, and that it thereby necessarily interferes with and injuriously affects their business.

It should further be stated that this measure (see section 49) repeals chapter 679 of the Laws of 1887, known as the 'Five Gallon Act.' That was a measure proclaimed at the time of its passage to be a valuable contribution to the cause of temperance, and it was promptly signed by me, with a memorandum expressing my hearty approval of the act, and giving the grounds thereof. (See page 177 of Public Papers of 1887, *ante,* p. 440.)

The Legislature now hastens to repeal the only real and honest temperance measure which it has enacted during the past four years, and such inconsistency is accounted for by reason of the importunities of certain Republican manufacturers of wines in a few of the interior counties of the State, who were unable to sell their wines or liquors under the restrictive provisions of the 'Five Gallon Act.' Under the latter clauses of section 1 of this bill they are permitted to sell their wines and liquors, provided they sell them to *others than residents* of the town or city where they are manufactured. This provision sufficiently exhibits the insincerity of those who are responsible for the bill in its present form.

Besides, under the provisions of this bill, social clubs like the Union League Club of New York city, and other similar institutions, are exempt from taking out licenses. They are not only not required to pay any license fee or other revenue to the public treasury, but they are permitted to sell on Sunday and to sell and keep open all night. This is claimed to be a most unfair and unjust discrimination. No greater or less restrictions should be placed around the poor man's lager than around the rich man's champagne. The rich man's elegant and palatial club should have no more privileges than the humble eating-house of the poor. There should be equal privileges to all — as well as equal and exact justice to all.

The excise laws of our State should be so framed as to operate fairly and equitably upon all classes of citizens. These salutary principles are concededly violated by the unwise provisions of this measure.

I recognize the evils incident to an unregulated liquor traffic, and favor all proper measures designed and calculated to restrict or mitigate such evils. But I insist that such legislation shall be honest, practicable, capable of enforcement and in accordance with public sentiment. Had the Legislature at any time during the past four years presented to me such legislation, it would have promptly met my approval. The people want just and equitable excise laws, capable of impartial and rigorous enforcement; laws broad and liberal in their scope, affording protection to the public, and at the same time not unnecessarily interfering with the personal liberty and habits of citizens; laws which operate upon all classes alike, and are designed to promote temperance, morality and good government, rather than to subserve political ends.

If the people of the interior of the State, by the votes of whose representatives in the Legislature such measures as this are mainly passed, are really desirous of increasing license fees and of obtaining more moneys from the liquor traffic for their public treasuries, they have the right to do so under existing laws. Present laws permit $250 to be charged in cities and $150 to be charged in towns for liquor licenses, and yet the prevailing rates for licenses in the very localities whose representatives supported this measure, *are scarcely one-quarter of these sums.* If public sentiment is really anxious for increased license revenues, it has only to make itself manifest in enforcing existing excise laws, rather than clamoring for new ones.

In the city of New York, for nearly three years past, the board of excise, under Democratic control, has refused to permit a new license to come into existence except upon the expiration or surrender of an existing license. Thus no increase of licenses has been possible. But, more than that: Whenever a license expired without renewal, or a licensed place has been voluntarily closed, an actual decrease has occurred, and that decrease has in the time named amounted to several hundred, while there has been a large increase of population.

The action of the Legislature in rejecting the excise commission bill is greatly to be regretted. The opportunity was exceptionally favorable for an adequate solution of the excise question. A commission, a majority of whose members was of the same political faith as the Legislature, and all of whom were of its own selection, had presented a measure which that body was honorably bound to adopt, without material alteration. But the Legislature, although virtually committed to it, rejected it to serve party ends and as a matter of political expediency.

The people must now wait until a Legislature shall be chosen with higher notions of honor, with broader conceptions of public duty, and actuated by sincere and honest desires to serve instead of betray the cause of temperance and good government."

June 6.

Memorandum filed with Assembly bill, chap. 382 — The Yates Convict Labor bill. Approved.

"A large portion of this bill is a consolidation and revision of the present confused and conflicting statutes relating to the administration of the State prisons. This work has been carefully done by Professor Charles A. Collin, of the Law School of Cornell University, and this part of the bill meets with my hearty approval. Many new features, however, are introduced in other portions of the bill, which are concededly experimental in their nature, some of which will probably result in failure, but the experiments may be worth trying. The provisions as to labor in the prisons are manifestly the result of a compromise between conflicting interests, and cannot be entirely satisfactory to any one. In my judgment too much discretionary power is vested in the Superintendent of State Prisons. The Legislature should have itself determined definitely the exact system of labor which the State proposes or desires to adopt, instead of having shifted that responsibility upon a State official.

The bill should have provided one consistent and adequate system of labor for all the penal institutions within the State. I should have preferred that the bill should have more carefully protected the interests of free labor, but a few of its provisions are reasonably fair in that respect, and it seems to be conceded that it was impossible at the late stage of the session when this bill was considered, to obtain from the Legislature anything more satisfactory.

The present emergency in the State prisons, as is admitted on all hands, demands some affirmative action. This measure at first met with considerable opposition, but after much discussion and amendment, finally passed the Legislature almost unanimously, and there has been but little opposition manifested against it since it came to my hands.

It seems to have been generally assumed that the bill should become a law as the only alternative for relief from the existing situation.

For these reasons, and because it seems to be the only practicable course left open to me at this time, and not because I regard the bill as perfect or entirely satisfactory, I have concluded that it is my duty to approve it."

Section 30, subsec. 2 of this act, removals by wardens, was sustained in People ex rel. Griffin v. Lathrop (1894) 142 N. Y. 113.

June 11.

Memorandum filed with Assembly bill, chap. 428, amending the Penal Code in relation to gambling — The Bucket Shop bill Approved.

"I am inclined to think that this is an honest bill, and that it ought to become a law. It aims to suppress what is regarded by some people as respectable gambling. Stripped of all unnecessary verbiage, it provides substantially as follows: 'That any person who shall *keep a room* to be used for making *any wagers or bets* made to depend upon any lot, chance, casualty, unknown or contingent event, or on the future price of stocks, bonds, securities, commodities or property of any description whatever, or for making any contract for or on account of any money, property or thing in action so bet or wagered' — * * * shall be guilty of a misdemeanor.

What is the act prohibited? It is the keeping of a room for the making of *bets or wagers*. Nothing else is forbidden. No *legitimate* speculation is interfered with. It is not intended to disturb the fair and honorable business of the various respectable mercantile exchanges of New York city. In that respect the purposes of the measure have been misrepresented or misinterpreted. If these exchanges, however, shall permit their rooms to be commonly used for the making of mere "*bets or wagers*" depending upon chance or the future price of stocks or commodities, then they will be affected by the provisions of this bill — but otherwise not.

The bill does not attempt to define what shall constitute a bet or wager, but it leaves that question wherever existing statutes and the decisions of the courts have left or may leave it.

The bill does not make void any contract which was before recognized as valid, nor does it discriminate in favor of or against any class of dealers. *Genuine* business transactions will not be affected by the bill. Rooms may still be continued to be used without molestation for the carrying on of *legitimate* speculations. *Valid* commercial contracts, no matter how speculative, may still be made and enforced the same as ever.

The situation is simply this: The Legislature, in its discretion, has seen fit to declare that the keeping of places for the making of mere bets or wagers depending upon the future price of stocks or commodities, or depending upon any other uncertain event, chance or casualty, is an occupation which not only should not be encouraged, but which should no longer be tolerated.

The theory of the measure is that the transactions carried on at such places, with the temptations and evils incident thereto or usually connected therewith, are demoralizing in their nature and ought to be suppressed; and it must be admitted that this view is largely sustained by an enlightened public sentiment.

I have read with great care the able, elaborate and ingenious arguments of numerous counsel presented to me in opposition to the bill, but they fail to convince me that the measure, if enacted, will injuriously affect or prohibit any transaction or business which rightfully or morally is entitled to protection."

June 13.

Veto filed with Assembly bill entitled "An act to secure to children the benefits of an elementary education, and making an appropriation therefor."[33]

"In refusing to approve this bill, I do not pass judgment upon its general intent and purpose. However meritorious its object may be, the bill is very loosely drawn and contains sweeping and unguarded provisions, the full force of which must have escaped the attention of the Legislature, which, indeed, is not to be wondered at when it is remembered that this is but one of the four hundred and fifty bills passed by the Legislature during the last ten days of the session.

The bill is, in some respects, unnecessarily offensive in its invasions of the liberty of the citizen, and in its interference with the control of parents over their children.

The bill provides that no child between the ages of eleven and fourteen years shall be employed at home, during the school hours of the public schools when in session, unless the parent employing such child shall procure and keep on file a certificate from the proper school officers, and such employment shall not continue beyond the time named in such certificate for such employment to cease; and every parent who so employs such child, shall for every such offense forfeit not less than twenty nor more than fifty dollars for the use of the schools of the city or district in which the offense is committed. No emergency of sudden sickness in the family, or otherwise, is excepted from the operation of this provision.

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[33] A compulsory education law was passed in 1874, chapter 421, and was in force at the time of the veto of the foregoing bill. A new compulsory education law was passed in 1894, chapter 671, which repealed inconsistent acts. The new act required children to attend a public school or receive equivalent instruction elsewhere between certain ages, and prohibited such children from performing labor while such schools were in session.

The bill also provides that when children between the ages of eleven and sixteen years are not regularly engaged in any useful employment or service, they shall be required by their parents to attend some school or to receive instruction at home by a teacher approved by public school officers, and for failing so to do the parents are criminally liable. The framers of the bill doubtless intended to except feeble or sick children from this provision, but it is at least doubtful if they have done so, and it is certain that any such exception, if allowed at all, must be based on a physician's certificate. No discretion whatever is left to the parents themselves.

'The fourteen weeks attendance at school required by this act shall be exclusive of any time lost by truancy *or otherwise.*'

These are merely samples of the loose and unguarded provisions of the bill.

It is sufficiently clear, without further discussion, that the public interests will be subserved by a postponement of the bill for careful and thorough revision by the next Legislature.

However desirable the object of any experimental measure may be, it is better that all evident imperfections should be amended before the measure becomes a law, rather than after actual and unfortunate experience of the evils occasioned by its defects.

Apart from the objectionable details of this bill there is another matter of substance worthy of consideration. The bill appropriates one hundred thousand dollars for the establishment of a State school to which truant children may be sentenced by criminal courts or judicial officers. This sum would, in accordance with the usual experience of the State in the erection of public buildings, be but a small portion of the amount to be ultimately expended before the State school would be completed and in running order. Such an institution would have an essentially criminal character, and it is at least doubtful whether public sentiment, upon which all laws ultimately rest for enforcement, would support the sentencing of children under fourteen years of age away from their homes to such an institution for mere truancy. If not, the money of the people would be wasted.

The proper provisions for truant schools might better be made by the local authorities than by the State at large. The cities and larger villages could be required, under penalty of deprivation of public school moneys or otherwise, to provide, at comparatively slight expense, suitable rooms or buildings for the more severe discipline and more suitable training of truant and insubordinate children than can be administered in the regular public schools. Attendance upon such local training schools could be enforced more easily and with less disgrace than at a distant State institution.

Appropriations from the State treasury have been made by the present Legislature with a very liberal hand, and while it is not economy to refuse to make necessary and useful expenditures, it is certainly wise to be cautious of large expenditures for projects of uncertain utility."

June 13.

Veto filed with Assembly bill entitled "An act to provide for the establishment of a reformatory for women, and making an appropriation therefor."

"This bill provides for establishing a 'House of Correction for Women, to be located at some point within the State, in the counties of New York or Kings, to be known as the Reformatory for Women.' Any female between the ages of fifteen and thirty years who shall have been convicted of petit larceny, habitual drunkenness, of being a common prostitute, of frequenting disorderly houses or houses of prostitution, or of any misdemeanor, and who is not insane, nor mentally or physically incapable of being substantially benefited by the discipline of said House of Correction, may be sentenced thereto for a term not to exceed five years, and may be detained therein the whole of said term unless sooner discharged therefrom by the board of managers.

The wisdom of establishing at this time another prison for women is doubtful, as it is evident that prison methods and management are undergoing decided changes, and, therefore, any action looking toward additional prisons for females should be taken with the utmost care and deliberation.

By the terms of this bill the location of the proposed house of correction must be fixed in one of the two counties of New York and Kings. While it may be assumed that the greater proportion of convictions of women are had in these counties, it is by no means certain, under existing conditions, that the prison should be located in either of them. The cost of the site alone in either of these counties will be necessarily enormous, for, in addition to the large amount of ground which must necessarily be used for the buildings to rest upon, there must be suitable grounds for the purposes incident to the prison. This bill appropriates for the purposes of the act $100,000, an amount hardly sufficient, in my judgment, to cover the cost of the necessary site in either of the above-named counties. Taking into consideration the cost of site and of the necessary buildings, and the furnishing of the same, the total ultimate outlay would, in all probability, be hardly less than three-quarters of a million dollars — a sum the expenditure of which the State should not authorize except upon a most urgent necessity. I am not convinced that this necessity exists at the present time.

As nearly as can be estimated from the imperfect statistics obtainable, there is a daily average of prisoners in confinement in the State of New York, exclusive of those confined in the county jails, of about 12,000. Of this number probably not more than a thousand are women, although there is no means of readily ascertaining the proportion which the convictions of women bear to those of men. Probably considerably more than one-half of this thousand are girls under the age of sixteen who are now imprisoned in the various houses of refuge. The remainder are imprisoned in the various penitentiaries of the State, and the Women's House of Refuge at Hudson.

Prior to 1877 the statutes of the State provided that all women felons should be imprisoned in the women's prison at Sing Sing. In that year, however, the Legislature abolished that prison and provided for the removal of the convicts therein contained to various penitentiaries of the State, and, also, that all women convicted of felony after that date should be incarcerated in penitentiaries. This was the deliberate act of the Legislature, and the inauguration of a new policy which should not be set aside, except upon the most substantial grounds. In all the penitentiaries provision of a kind which met the approval of public sentiment, up to certainly within a very recent period, was made for the reception of females. If the purposes, so far as understood, of the framers of this bill are fully carried out, it will necessarily involve the transfer of all female convicts ultimately to separate prisons for women, of which the house of correction proposed in this bill will be one.

A few years since the State began the erection of a women's prison or house of refuge at Hudson. This prison has been partially constructed, according to the plans of its promoters, and has been open for the reception of inmates for a period of about two years, and is now capable of holding a population of about 250 prisoners, and, as I am informed, by the outlay of a comparatively small sum of money in the erection of additional buildings on the ample grounds now belonging to the institution, accommodations for at least 500 additional inmates can be secured. It was believed at the time this prison was undertaken that it would meet all of the requirements of the situation for some years to come. Although the act providing for the erection and maintenance of this prison excluded the reception of inmates from the counties of New York and Kings, it will be easy to amend that statute so that the courts of those counties may commit women convicts thereto.

The State, within the past few years, has made provision for the erection of a new State asylum for insane criminals at Matteawan, in order to fully meet the wants of the criminal insane, which the old asylum at Auburn did not sufficiently supply. Upon the completion of this new asylum, the old asylum at Auburn can be readily used for the purposes of a women's prison, at a cost of probably not more than one-tenth of the sum which will be required to erect the new prison contemplated by the provisions of this bill. The old asylum grounds at Auburn are securely enclosed by a high wall. The asylum was built in the most substantial manner of stone. The grounds are commodious, and in every respect it seems admirably adapted for the purposes of a women's prison. If the Legislature should decide to utilize the old State Asylum for Insane Criminals for this purpose, that and the House of Refuge for Women, in Hudson, I am convinced, will supply all of the needs in this direction for years to come.

Very curiously, by the provisions of this bill and also of the statute which provided for the erection of the Women's Prison at Hudson, no female convicted of felony can be sentenced to either of these institutions. This bill, as well as the old statute, simply provides for the incarceration of misdemeanants. Thus it will be seen that however desirable it may be thought to provide additional accommodations for female prisoners no provision has been made for such as are convicted of the more serious grades of crime. There appears to be no substantial reason why a girl who has been convicted of a petit larceny should have any more or greater advantages in the way of reformation than one who has been convicted of grand larceny. Then again, it may be seriously doubted whether it is the part of wisdom for the State to permit the association of women convicted of being common prostitutes with females who have been convicted of other crimes, but whose character for chastity is good. It would seem rather that in any contemplated scheme of prisons for the reformation of women, prostitutes should be confined in an institution by themselves, and should not be permitted to contaminate others who are guilty of quite different violations of law.

This bill bears evidence of haste and want of care in its preparation. It is also clearly evident that the advice of persons most familiar with the subject of prison reform was not sought or asked. The matter is one of too great moment to be lightly passed upon, and should, before legislative action is sought, receive the mature consideration and deliberate judgment of the most thoroughly informed persons upon the subject.

For the foregoing reasons, I am unwilling to give my approval to this measure, as I believe that the State will gain rather than lose by deferring the subject until further investigation shall show the necessity — if any exists — of building another prison for women."

June 13.

Memorandum filed with Assembly bill, chap. 466, relating to the tax on dogs. Approved.

"This bill exempts the counties of New York, Kings and Erie from the provisions for taxing dogs, and might, therefore, at first sight, appear to be in conflict with the principle which I have frequently declared, that bills for raising revenue should apply uniformly to all portions of the State. The county of New York is already exempted from the provisions of the Revised Statutes proposed to be amended by this bill. But a careful examination of the provisions of the Revised Statutes in question will show that the object of the tax on dogs is not to raise revenue, but, instead, to raise a fund from which to indemnify the owners of sheep which have been killed by dogs. This is not, therefore, a tax or revenue bill properly so-called, and the counties mentioned in which sheep are not raised are properly exempted from the provisions of the bill."

June 13.

Memorandum filed with Senate bill, chap. 464, relating to the New York Historical Society.[34] Approved.

"The building of this corporation is now exempt from execution, and, consequently, by force of the statute, is exempt from taxation also. The main object of this bill is to allow the society to dispose of its present site and acquire another without losing its present rights to exemption. As such a change will create no new or increased exemption, but only preserves existing rights, this bill is not open to the objections which I have frequently made to special bills exempting individual institutions from execution and taxation."

June 13.

Memorandum filed with Assembly bill, chap. 462, relating to the New York Hospital.[35] Approved.

"This appears on its face to be a special bill extending the exemption from taxation of the property of the New

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[34] The act of 1893, chapter 498, exempted the real property of historical societies from taxation. This act, enlarged and extended, was afterward included in the Tax Law of 1896, chapter 908, section 4, subdivision 7.

[35] The statutory provisions referred to in note 34, applied also to hospitals, which were exempted from taxation.

York Hospital. I have lately uniformly refused to approve special legislation of that nature, upon the ground that such exemptions should be made, if at all, only by general laws applying equally to all institutions similarly situated.

But the actual effect of this bill is neither to extend nor to create an exemption from taxation. The valuable property now owned by this corporation in the business portion of the city of New York is already exempted from taxation by chapter 466 of the Laws of 1875. The corporation desires to dispose of this property for business purposes, thereby rendering it again subject to taxation, and to acquire a less expensive site in the suburbs of the city. All that is, in fact, sought by this bill, is to transfer the exemption from taxation to the new site, upon surrendering their present property to the jurisdiction of the taxing authorities. The local authorities of New York city are desirous that the hospital should be so removed. The people in the locality of the proposed new site make no objection to the change. This bill will encourage the removal of the hospital, and will actually turn over to the taxing authorities property of greater value than it will withdraw from their jurisdiction. Upon this understanding of the local situation, I have no hesitation in approving the bill."

June 14.

Memorandum filed with Senate bill, chap. 482, to amend the charter of the city of Auburn. Approved.

"It is important that, as far as possible, definite principles or a defined policy should be established and adhered to in regard to measures increasing the salaries of local officials. Numerous such acts pass the Legislature annually, and several have been passed by the recent Legislature, and are now pending before me awaiting action.

A reiteration of the course which I have endeavored to pursue in the past, and desire hereafter to pursue in reference to such bills, may be pertinent at this time, not only by way of explanation, but for the information or guidance of legislators in the future.

In the first place, special bills merely increasing salaries are regarded as objectionable. The change should be made, if at all, by appropriate amendments to charters, general laws, or other proper existing statutes upon the same subject.

In the second place, the salaries of subordinate officials of municipalities, such as policemen, firemen, teachers, clerks and other similar employes usually appointed by and under the control of a department already having power to regulate the compensation which they should receive, should not be arbitrarily increased by the Legislature, but the power or authority only to make such increase should be conferred upon such board or other proper local authorities, within certain defined limits.

It was upon these grounds that certain vetoes were based, which appear at pages 112 and 113 of my Public Papers of 1886, and at pages 52 and 53 of my Public Papers of 1888.*

Even if such boards should not already be vested with any discretionary power over the matter of compensation, it is wiser, when the legislative power is invoked to authorize and increase, that such increase should be left discretionary with the proper local authorities, within certain limits, rather than arbitrarily determined by the Legislature itself.

This rule, of course, cannot well be applied to elective officials or to important officials who are appointed, but can more properly be enforced in regard to mere subordinate officials, and especially to large classes of employes who are under the general control of boards or departments. There may arise cases where some exceptions to this general rule will necessarily have to be permitted, but they should be very rare, and should be based upon peculiar and unusual circumstances.

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* *Ante*, pp. 211, 524.

In the third place, the propriety of amendments to charters whereby salaries of elective officials or important appointive officials are increased, must be determined the same as any other amendments. Such increase cannot appropriately be left to the local authorities. Elective officials and important appointive officials, when they accept their offices, are entitled to know definitely what salaries they are to receive. Such salaries should be fixed in charters, and charters must be granted by the Legislature, and local authorities have no power to make or amend them. They may *suggest* amendments, the same as any citizen can do, and their views as to the propriety of any amendment should be considered, but they are not *necessarily* controlling.

It does not violate the principle of 'home rule' when the Legislature itself frames a charter or amends one, and inserts provisions which its own judgment approves, even if such provisions do not accord with local sentiment. Upon matters in regard to which the local authorities have no power of legislation and which are peculiarly within the province of the Legislature to determine, and in regard to which there must be legislative action, the principle of 'home rule' is not applicable, and no criticism of the Legislature upon that ground is pertinent.

The Legislature, in acting upon such matters, may consult with the local authorities, the local representatives and citizens generally, and usually does so, but that is a mere matter of courtesy and custom. In determining the propriety of an amendment to a charter increasing salaries, the Legislature will act according to its own best judgment and upon all the facts presented. It may or may not follow the requests of the local authorities. It may follow them in part, but not in all.

There is no fixed rule for determining such questions. If the amendment is favored by the Senators and representatives from the district in which the chartered town or city is situate, and the local authorities also favor it, and there does not appear to be any substantial or material opposition manifested to it among the citizens and taxpayers, the Legislature may well conclude that it is a proper and desirable amendment.

But the absence of these circumstances, or a conflict of opinion among the representatives, authorities or citizens in regard to it, is not necessarily conclusive one way or the other. The Legislature must, in each instance, act upon its own discretion, and determine the matter for itself, the same as it must determine any other features of a charter not relating to salaries.

The enunciation of these views, to which I shall endeavor to adhere, may serve to create a clearer understanding of the general rules which govern the disposition of this class of bills.

In regard to the increase of salaries provided for by this bill, and in Assembly bill No. 675, relating to Buffalo, and Senate bill No. 692, relating to Syracuse,* it may be stated that such increase is favored by all the representatives of such cities in the Legislature, and also by the local authorities, and no material opposition has manifested itself on the part of citizens or taxpayers, and the Legislature having in its discretion seen fit to enact these measures, and no facts having been presented to me which would reasonably justify the withholding of my approval, I have this day approved all such measures."

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* See L. 1889, chap. 480, Buffalo; and chap. 475, Syracuse.

June 14.

Memorandum filed with Senate bill, chap. 492, to establish a State Naval Militia.[36] Approved.

"There has been much misapprehension in regard to this bill, arising, it is believed, rather from its title than from any of its provisions.

Briefly stated, the bill first provides for a separate enrollment of seafaring men, whenever an enrollment of persons liable to military duty is made. Under the Military Code an enrollment may be made whenever the Commander-in-Chief 'deems it necessary.' It has not been deemed necessary for many years, and any such necessity is probably very remote.

It further proposes to organize a naval militia after the manner of the National Guard, by voluntary enlistment, from persons liable to be enrolled 'and from others,' after the manner of the National Guard, which is maintained without reference to any actual enrollment.

It proposes to increase the active military force of the State, now limited by law to 'not less than ten and not over fifteen thousand enlisted men,' by the addition of 'three battalions of naval reserve artillery and a naval reserve torpedo corps,' each battalion to be composed of four companies, making an increase in the uniformed militia of perhaps a thousand officers and men, to be commanded by officers with naval titles.

These battalions will be practically land forces, which. it is true, may be used on the water as other land forces may have been used, and it would appear that all the purposes of the bill, excepting the naval titles, may be as well, if not better, accomplished under the existing Military Code.

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[36] This act, Laws 1889, chapter 492, was merged in and repealed by the Military Code of 1893, chapter 559. The Constitution of 1894, article 11, section 3, included a provision relative to the naval militia which was then recognized in the Constitution for the first time. See also Military Code of 1898, chapter 212.

The wisdom of the bill is certainly open to question. If the force to be raised were purely naval in its character, rather than essentially a land force, it is at least doubtful whether the State should assume, under any circumstances, to provide naval defenses for our rivers and harbors. This is the duty of the general government, and, until the general government undertakes to put our harbors in a state of defense to meet the requirements of modern warfare, the maintenance of a small additional land force by the State would be a matter of little military consequence.

The advisability of instructing and practicing troops in the use of sea coast artillery is conceded. But this may be better accomplished by sending some of our regiments or companies to the forts, or by organizing some of them as regiments or batteries of heavy artillery, or, better still, if the time has come when an increased force is deemed a necessity, by organizing new batteries under the Military Code. Indeed, if organizing twelve companies of naval reserves should prevent the organizing of a few batteries of heavy artillery, I am advised that it would be regarded by our best officers as detrimental to our military interests.

The military establishment of the State costs in direct expenditures for the National Guard about $400,000 a year, an amount which is largely increased by appropriations for armories, armory improvements and repairs, and other purposes, making a total sum this year of nearly a million of dollars. The National Guard should be maintained in its integrity, and has shown itself worthy of the liberal appreciation extended to it by the Legislature, but any extension of the limitation of the statute as to numbers, whether it be of the National Guard proper, or by the addition of a similar force under another name, which might sooner or later involve increased expenditures, is a matter which should not be hastily adopted or approved. Moreover, the organization of a force which might in any manner affect in the slightest degree the maintenance, or the discipline of the National Guard or the efforts made to promote it, would be a subject for regret, although it is only fair to say that the discipline of both forces ought to depend largely upon the action of general headquarters.

There seems to have been a common impression that Congress had made an appropriation to carry out the purposes of this and similar bills. No such appropriation has been made. There was a certain sum named in what is known as the 'Whitthorne bill,' introduced in the last Congress, but the bill did not become a law.

The force contemplated by the bill in question will require uniforms, arms and equipments, and the promoters of the bill admit that they will need armories and drill places (a necessity which will interest the localities where they may be stationed), and if there are no funds for these purposes, it will not avail much as a military body. It is to be feared that efforts to obtain appropriations from the Legislature would not be long deferred. If the scheme proposed by this bill contemplates any material expenditure on the part of this State, now or in the future, I am opposed to it, because I believe that the people do not desire any such expenditure incurred.

But my attention has been called to the eighth section of the bill, which provides that 'when the government 'of the United States is ready to supply arms and equip- 'ments, as well as the material and opportunities for 'naval instructions and drills, the Governor is authorized 'to make the necessary arrangements for carrying such 'programme' (viz., to organize the battalions, commission officers, etc.), 'into effect;' and it is explained that no claim is made that the Governor could be required to proceed until the general government is prepared to provide everything that may be necessary to fully arm, equip and uniform the force that may be raised; and even then it is said by the promoters of the bill that it is a matter entirely within his discretion, and no harm can result, without the consent of the Executive, if the bill becomes a law.

Moreover, I have been strongly urged by many persons prominent in public and business life, officers of the general government, leading merchants, well-known professional men, and others representing various interests and occupations, to give vitality to this bill, and the press has generally committed itself to its advocacy. Under these circumstances, and remembering that the organization and control of the force proposed, as well as the possibility of its becoming a charge upon the State treasury, depend largely upon the action of the Executive, I am disposed to give the views expressed in favor of the bill such liberal consideration as the position of those who presented them may well demand, and to test the merits of the measure by allowing it to become a law. I have, therefore, affixed my signature to the bill.''

June 15.

Memorandum filed with Assembly bill, chap. 509, relating to the dock commissioners in New York city. Approved.

'' The Consolidation Act of New York city enables the commissioners of docks to permit any pier to be shedded, except certain piers on the East river, which in 1875 were exempted from their jurisdiction for the benefit of a certain class of sailing vessels. The vessels for whose special benefit this exception was made do not now use the piers in question to any great extent. This bill does not direct that any pier shall be shedded, but simply modifies the Consolidation Act by permitting the commissioners of docks to determine in every case the propriety of piers being shedded.

I think the bill has been somewhat misunderstood in its provisions. It does not seek to give any special privilege of any kind, but simply gives the same jurisdiction to the commissioners of docks of the city of New York in respect to these piers that it has over any other piers in the harbor. If any reason exists why these particular piers should not be shedded, that reason can be presented to the commissioners of docks, who can act upon it.

In approving this bill I do not pass upon the question of the propriety of shedding these particular piers. I simply approve a measure which authorizes certain local authorities of the city of New York, namely, the dock department, to determine that question. This is in accordance with the principle of 'home rule,' and it is difficult to see what objection there is to the bill. The commissioners of docks, if they act honestly and intelligently upon this subject, can determine better than the Legislature or myself the propriety of the shedding of any particular piers. No harm can be done in vesting that power in them. If they act corruptly or illegally, they can be removed from office. I can see no good reason why the commissioners of docks should not be vested with jurisdiction over the disposition, control and management of the docks of the city, the same as the police commissioners have control over police matters, the park commissioners over the parks, the fire commissioners over the custody of engine houses and the commissioner of public works over the streets of New York city.

Considerable objection has been raised to the bill, but it principally can be traced to selfish or rival interests, who feel that they will be affected in case the commissioners of docks should act contrary to their desires. I am convinced that many of the people who have opposed the bill are opposing their own best interests, and that, upon the whole, the bill will be of substantial benefit to the commercial interests of the great city of New York."

June 14.

Memorandum filed with Assembly bill, chap. 536, to establish the bulk-head line in the East river. Approved.

"I do not understand the opposition to this measure. The bill simply extends a certain bulk-head and pier line along the East river, which line was designated or surveyed a few years ago by certain United States engineers, one of them being General John Newton.

The propriety of establishing or settling this pier line admits of no question. There is no dispute as to the reasonableness of the line fixed by the engineers. That the establishment of this line by the authority of the State will unquestionably lead to many improvements in Long Island City, and greatly facilitate its commerce, cannot well be denied. It will improve the channel of the river. It will add to the present dock facilities. It will increase the value of the city's water front. It will not injure, but assist navigation. It will enable larger ships to land at the wharves. The bill does not close any streets which are now lawfully opened or located, but all such streets are continued and extended to the new pier line of the East river.

The numerous remonstrances, petitions, resolutions and papers presented to me in opposition, nearly all recite that the streets upon the new pier line are closed by the provisions of the bill, but this is a mistake, as section three expressly provides to the contrary. It may be true that some streets in this locality have been improperly closed heretofore by special acts of the Legislature, and that the citizens of Long Island have justly a right to complain of such action, but that question has nothing to do with the propriety of this measure. If any streets have thus been improperly closed, the special acts should be repealed, and such repeal would meet with my prompt approval.

I have read with great care all the papers submitted to me in regard to this bill, but I confess that I do not discover any substantial grounds for opposition. It looks to me as though some of the citizens who object to this measure are really standing in their own light, and that the best and truest interests of Long Island City and its business and commercial prosperity will be promoted by the approval of the bill. The Legislature, in its discretion, has seen fit to pass it, and I can discover no good grounds upon which I can intelligently base a veto. When the simple provisions and beneficial effect of the bill are clearly understood, I am satisfied that the intelligent and enterprising citizens of Long Island City will approve of this course."

June 15.

Memorandum filed with Assembly bill, chap. 496, making an appropriation for the Northern New York Institution for Deaf-Mutes. Approved.

"Until 1887 the State had adopted the general rule of not making appropriations towards the erection of buildings for the care of deaf-mutes. In that year I allowed a departure from that rule, and reluctantly permitted an appropriation of $40,000 for this institution to become a law, with which to erect a building. I am satisfied that such action was a mistake, and that it would have been the better course to have adhered to the general policy almost uniformly theretofore pursued by the State.

The precedent created in 1887 was an unfortunate one, and it is being urged in behalf of other institutions seeking similar aid from the State.

The appropriation of $40,000 given this institution was not sufficient to fully complete its building, although it was represented by those who were urging that appropriation, or, at least, I understood them to assert that such sum would be sufficient for that purpose.

Last year the Legislature passed an additional appropriation of $20,000 to fully complete the building, but I refused my approval thereof, because I was satisfied that such amount was not adequate for that purpose, and also for the reasons stated at length at pages 60 and 61 of my Public Papers for 1888.*

The bill now makes an appropriation of $25,000 for the purpose of fully completing said building, and it is represented that such sum will be entirely sufficient, and that no further appropriation for any such or similar purpose will be asked or expected.

The situation is simply this — the building is partially constructed, but is not in a fit condition for use, and the expenditure authorized by this bill is absolutely necessary. If the appropriation is not approved, the building is useless, and must remain idle, because the institution seems to be unable to provide further means to complete it. It seems deplorable that so useful and worthy an institution as this is conceded to be should be placed in such a situation. I feel that, having encouraged the erection of this building in 1887, by allowing an appropriation for it and permitting an unwise departure from the previous general course of the State in such matters, I am to some extent responsible, with the Legislature, for the present situation, and am somewhat committed to the completion of this building.

I am constrained to think that it is wiser, and that the best interests of the State will be better subserved, by approving the present appropriation, and thereby enabling the building to be made ready for occupancy. An emergency is presented, unusual and peculiar in its character, and this seems to be the only adequate or practical solution of it.

This action, however, must not be regarded as a precedent for similar appropriations to similar institutions.

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* *Ante*, p. 531.

My convictions are that the general course pursued prior to 1887 should be adhered to, and that no other appropriations of this character should hereafter be made."

June 15.

Veto filed with Senate bill entitled "An act to amend chapter 462 of the Laws of 1887, entitled 'An act to amend chapter 409 of the Laws of 1886, entitled "An act to regulate the employment of women and children in manufacturing establishments, and to provide for the appointment of inspectors to enforce the same."'"

"This bill provides for the appointment by the Governor of six women as deputy factory inspectors in addition to the male factory inspectors now authorized by law. This object was intended to be accomplished by the addition of the proper provisions therefor, at the end of the present section 15 of the Factory Inspectors Act, without changing the present language of the section except by such addition. The last sentence of section 15 now reads as follows:

'The powers of said deputies shall be the same as the power of the Factory Inspectors, *subject to the supervision and direction of the Factory Inspector.*'

By an unfortunate clerical error in copying that sentence into the new section 15, as proposed to be amended by this bill, the final words, 'subject to the supervision and direction of the Factory Inspector,' are omitted. The effect of this bill would, therefore, be to give to the male Deputy Factory Inspectors the same powers as the Chief Inspector, without qualification. This would inevitably lead to a conflict of authority between the inspector and his deputies, all having equal powers with no head to decide disputes. It is vital to the system of the Factory Inspectors' Bureau that there should be one head thereof, with power to direct its operations and to supervise and direct its subordinates.

There is still another fatal defect in this bill. By section 18 of the Factory Inspectors Act, which is left unamended, the Factory Inspector could have the power to remove, at his pleasure, the women deputy inspectors appointed by the Governor. No power is given either to the Governor or to the Factory Inspector to fill such vacancies. The result would be that it would lie in the power of the inspector not only to remove the women deputies appointed by the Governor, but to absolutely abolish the entire board of women deputies, with no power to restore them. The strange spectacle would thus be presented of the removal of appointees of the Governor of the State by one of his subordinates.

Section 18 of the Factory Inspectors Act should also have been amended by exempting the women deputies appointed by the Governor from removal by the inspector. Power should be expressly given to the Governor to fill vacancies occurring in the office of women deputy factory inspectors, from whatsoever cause.

I regret exceedingly that such fatal errors should have crept into this bill, but the bill did not reach my hands until after the adjournment of the Legislature, when amendment became impossible. The appointment of women as deputy factory inspectors seems to be very generally desired, and the benefits to be derived therefrom are obvious and important, but not so important as to justify me in placing upon the statute books a law containing such serious errors and likely to produce such grave complications in its practical working.

It is to be hoped that the next Legislature will speedily pass a bill remedying these defects, in which case I shall be glad of the opportunity to approve the same."

June 15.

Veto of items in Assembly bill, chap. 570 — The Supply bill.

" 'For the Comptroller, for the payment of bills to be audited by him for the services of Edmund C. Lee, as stenographer to the Assembly committee on public education, expenditures of the executive department and expenditures of the house, at the rate of five dollars per day, pursuant to resolution of the Assembly, adopted January twenty-third, eighteen hundred and eighty-nine, the sum of six hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

The employment of a stenographer for the Assembly committee named, I am informed, was not legally authorized, and was not necessary. If legally appointed, he should be paid from the ample annual general appropriation of three hundred and forty thousand dollars made for the compensation and mileage of members and officers of the Legislature.

'For the Comptroller, for the payment of bills to be audited by him, for the services and expenses of Archimedes Russell, Stanford White, Charles B. Brush and Albert H. Chester, as special experts to examine the construction of the Assembly ceiling and staircase, pursuant to resolution of the Assembly, passed January twenty-second, eighteen hundred and eighty-nine, four thousand five hundred and twenty-two and thirty-five one hundredths dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

In vetoing a similar item, contained in the supply bill of 1888, I said (see page 76 of the Public Papers of the Governor for 1888):*

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* *Ante*, p. 547.

'No such expenditure of State funds can legally be authorized by concurrent resolution. Under the Constitution a proper bill should have been passed by the Legislature and an appropriation have been made to carry it into effect. This not having been done before the examination referred to in the item was entered upon, it is now necessary for the Legislature to pass a bill legalizing the concurrent resolution mentioned. This is a course the Legislature has frequently followed in the case of other expenditures made, under the deficient authority of concurrent resolution.'

These general objections to expenditures pursuant to concurrent resolutions apply with still greater force to expenditures rendered pursuant to the resolution of a single house, which is stated as the authority in the item before me.

'And for Thomas C. Clark and Richard W. Upjohn, for services as experts in making examinations of the stability of the stone arch vaults of the Assembly chamber, and reporting thereon, pursuant to resolution of the Assembly, passed January twenty-fourth, eighteen hundred and eighty-eight, the sum of four thousand eight hundred dollars.'

This item is objected to and not approved, for the same reason as stated in objection to the last preceding item. It may be further stated that the item for this same purpose was disapproved by me last year, for the reason plainly given, that no authority of law existed for the expenditure, and it was pointed out that the resolution — then called a concurrent resolution — must be legalized by an act of the Legislature before an appropriation could lawfully be made.

'For the Comptroller, for the payment of bills to be audited by him, for services and disbursements of Edwin H. Risley, as attorney in defending the State Dairy Commissioner on investigation before the Senate Committee on Public Health, pursuant to resolution of the Senate, passed April twentieth, eighteen hundred and eighty-six, the sum of six hundred dollars.'

This item is objected to and not approved.

I am advised that the services described were not necessary, so far as the State was concerned, and I see no reason why the public money should be used to pay for them or for disbursements of the character mentioned.

'For the Comptroller, for the payment of bills to be audited by him, for expenses incurred by the Senate Committee on Public Health of eighteen hundred and eighty-six, for fees of counsel in the investigation of charges against the State Dairy Commissioner, pursuant to resolution of the Senate, passed April twentieth, eighteen hundred and eighty-six, the sum of six hundred and twenty dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

In 1886 the Senate Committee on Public Health consisted of three lawyers. It is difficult to perceive what need there can have been of counsel to the committee in this case. There was no controversy which justified the employment of outside counsel.

'For the Comptroller, for the payment of bills to be audited by him, of the B. W. Wooster Furniture Company, for furniture, desks and chairs placed in the rooms used by the clerks of the Senate and Assembly and their deputies, pursuant to Senate resolution, passed March thirtieth, eighteen hundred and eighty-eight, nine hundred and sixty-one dollars.'

This item is objected to and not approved.

The policy of the State is that every department should pay for such supplies from its regular contingent fund, and I see no reason why the clerks of the Senate and Assembly should not pay like bills from the ample annual appropriation of thirty-three thousand dollars provided for their contingent expenses.

'For the Comptroller, for the payment of bills to be audited by him, for attorney and stenographer employed by the special Assembly committee, appointed to investigate the condition of the Indians of the State, by resolution of the Assembly passed March twenty-first, eighteen hundred and eighty-eight, the sum of six thousand dollars, or so much thereof as may be necessary; but the compensation of said attorney shall not exceed three thousand dollars.'

This item is objected to and not approved.

Such information as I have been able to obtain does not convince me that these services have in any way been of any particular value to the State. The payment thereof only encourages the continuance year after year of useless investigations during the summer months when the Legislature is not in session, and tends to promote a needless expenditure of the people's money.

'For the Comptroller, for the payment of bills to be audited by him, for services and disbursements of Julien T. Davies, as counsel to the Senate Committee on Taxation and Retrenchment in revising the compilation of constitutional provisions, statutes and cases relating to the assessment of taxes, and in adding thereto abstracts of cases cited, pursuant to resolution of the Senate, passed February third, eighteen hundred and eighty-eight, the sum of seven thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

The results of the deliberations of the committee men tioned never have been such as to justify the expenditure of a dollar. The so-called 'Vedder Tax bill' was one of the remarkable financial measures devised by such committee, and the scheme of taxation therein proposed has met with the practically unanimous condemnation of the people of the State, and has been pronounced absurd and unsound by all who have given any special consideration whatever to the fundamental principles which should prevail in taxation.

The Comptroller is the financial officer of the State, and he is ready to give advice upon matters relating to the increase of State revenues. Certainly the State does not need committees, with a long retinue of special counsel, stenographers, clerks and attendants, to devise additional methods of taxation.

'For the Comptroller, for the payment of bills to be audited by him, for services and disbursements of George Bliss, as counsel to committee of the Senate on general laws in its investigation of trusts from February twentieth to December thirteenth, eighteen hundred and eighty-eight, pursuant to resolutions of the Senate passed February sixteenth and February twenty-ninth, eighteen hundred and eighty-eight, the sum of four thousand and thirty-one dollars and seventy-nine cents, or so much thereof as may be necessary.'

This item is objected to and not approved.

The committee on general laws of the Senate of 1888 consisted of seven members, of whom six were lawyers by profession. This would seem to have been a sufficient number of the legal fraternity to have conducted an investigation without the aid of special counsel. At any rate one special assistant was sufficient, and General Pryor was amply competent to aid and give all necessary advice to the committee in legal matters. The extravagant employment of numerous counsel — who are not infrequently obstructionists to real investigation — as well as a multitude of stenographers, experts and clerks, by various special and standing committees of the Legislature, has become an abuse no longer to be tolerated without protest. Such a protest I desire now to make, and to make it practically effective by disapproving this and several other items of like character. The time has come when it is necessary to cry a halt in such wasteful expenditure of money taken from the people by taxation.

'For the Comptroller, for compensation for services of James K. Apgar, as stenographer to the special committee appointed by resolution of the Assembly passed May eleventh, eighteen hundred and eighty-eight, to prepare a system of rules for the Assembly and to methodize and improve the manner of making laws, the sum of seven hundred and fifty dollars.'

This item is objected to and not approved.

I am informed that the so-called stenographer, who was the speaker's clerk, is not a stenographer, and that there was no occasion for his nominal appointment as such, except to give him an additional place and extra compensation.

'For the Comptroller, for compensation to Jennie Turner, for her services as stenographer to the committee on taxation and retrenchment in the matter of the investigation of Bloomingdale Asylum, by resolution of the Senate, adopted March ninth, eighteen hundred and eighty-eight, five hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

The Comptroller informs me that this committee had a regular stenographer at the time the alleged services were performed, and such stenographer was paid during said time. For these reasons he has refused payment of the bill for additional stenographic services to the committee on taxation and retrenchment. There was no authority of law for such additional stenographer.

'For the Superintendent of Public Works, for repairing the roads and bridges on the Onondaga Indian reservation, two thousand dollars, twelve hundred dollars of which shall be expended on the new William Hill cross road, as laid out in eighteen hundred and seventy-four, and eight hundred dollars on the highway known as the main Cardiff road.'

This item is objected to and not approved.

I am informed that the roads and bridges named are in a sufficiently good condition for all necessary public purposes, and I, therefore, have concluded that the expenditure proposed is not warranted at this time.

'For the repairs of roads and bridges on the Cattaraugus Indian reservation near Gowanda and Versailles, three thousand dollars.'

This item is objected to and not approved, for the same reason as that stated in objection to the last preceding item.

'For building a bridge over the Allegany river at Onoville, in the town of South Valley, on the Allegany Indian reservation, according to estimates of the Superintendent of Public Works (in addition to the appropriation made by chapter two hundred and seventy of the Laws of eighteen hundred and eighty-eight), twenty-one thousand five hundred dollars; but no part of this appropriation, except for necessary inspection and engineering, shall be expended until a contract shall have been executed, with sufficient sureties, by the lowest responsible bidder or bidders, after suitable advertisement, for the completion of the work as contemplated, within the limits of this appropriation and that made therefor in said chapter two hundred and seventy.'

This item is objected to and not approved.

While the bridge which it is proposed by this item to rebuild is, from what I learn, probably in need of some repairs, I am unable to give this appropriation my approval for the following reason: The clause making mandatory the awarding of the contract to the lowest bidder is at variance with the usual custom of leaving it optional with the Superintendent of Public Works to reject any or all bids, and past experience has shown that such a mandatory clause frequently operates to the great detriment and defrauding of the State. It presents a constant temptation to bidders to form combinations whereby even the lowest bidder obtains the contract at a price largely in excess of what is actually a just and reasonable compensation for the work to be done. This same contract clause compels the disapproval of many other items of a somewhat similar character. I have waived this objection only where the necessity for the work seemed imperative.

'For the completion of the channel in the Peconic river in the county of Suffolk, the additional sum of three thousand five hundred dollars, but no part of this appropriation, except for necessary inspection and engineering, shall be expended until a contract shall have been executed, with sufficient sureties, by the lowest responsible bidder or bidders, after suitable advertisement, for the completion of the work as contemplated, within the limits of this appropriation and that made in chapter four hundred and thirty-four of the Laws of eighteen hundred and eighty-eight.'

This item is objected to and not approved.

The provision as to awarding the contract, mentioned in disapproval of the last preceding item, compels me also to disapprove this item.

'For removing the obstructions and otherwise improving the navigation of Grass river, three thousand dollars; one thousand dollars of the above amount to be expended on the middle branch, one thousand dollars on the main branch above Canton, and the remaining one thousand dollars to be expended on the river below Canton.'

This item is objected to, and not approved, for the reason that it is not deemed expedient to make the proposed expenditure at the present time. The burden of taxation is continually increasing and there is need for the most rigid economy.

'For removing the obstructions in that portion of the Genesee river in the county of Allegany, where said obstructions are diverting said river from its proper channels, ten thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

In 1839 and 1840, a portion of the channel of the Genesee river was made straight for the purpose of protecting the canal, and in the fifty years past the State has paid for damages resulting from such change only $320. In view of this fact, I do not see any valid reason for the excessive appropriation of ten thousand dollars asked for in this item. If the river has been diverted by the State from its proper channel to the injury of any citizen, a tribunal exists where such claim should be presented.

The item is also defectively drawn, in that it does not designate the State officer who is to make the expenditure.

'For the purpose of improving, turnpiking and grading the State road on the Allegany Indian Reservation, running across the towns of Carrollton, Great Valley, Salamanca, Red House, Cold Spring and South Valley, six thousand dollars, to be apportioned as follows, namely: One thousand dollars to be expended on that portion of said road situated in each of the six towns aforesaid.'

This item is objected to and not approved, for the reason that it is not deemed expedient to make the proposed expenditure at the present time.

The item is also defectively drawn, in that it does not designate the State officer who is to make the expenditure.

'For the Superintendent of Public Works, for dredging, removing obstructions and otherwise improving the navigable channel of Big Chazy river, from Lake Champlain to Champlain village, ten thousand dollars.'

This item is objected to and not approved, for the reason that it is not deemed expedient to make the proposed expenditure at the present time.

'For the Superintendent of Public Works, for dredging and deepening Penataquit creek, Bay Shore, Suffolk county, eight thousand dollars, but no part of this appropriation, except for necessary inspection and engineering, shall be expended until a contract shall have been executed, with sufficient sureties, by the lowest responsible bidder or bidders, after suitable advertisement, for the completion of the work as contemplated, within the limits of this appropriation.'

This item is objected to and not approved, for the reason that it is not deemed expedient to make the proposed expenditure at the present time. It is also objectionable inasmuch as it contains the contract clause to which reference was made in disapproval of the Onoville bridge item. By reason of such a clause the State has oftentimes been obliged to pay excessive sums for the construction of various public works.

'For the Superintendent of Public Works, for dredging the Oswegatchie river and its tributaries, above the junction of the Fine and Harrisville branches in St. Lawrence, Lewis and Herkimer counties, removing sand-bars therefrom and otherwise improving the navigable condition thereof, six thousand dollars.'

This item is objected to and not approved, for the reason that it is not deemed expedient to make the proposed expenditure at the present time.

'For the Superintendent of Public Works, for completing and increasing the capacity of Stillwater reservoir on Beaver river, constructed pursuant to chapter three hundred and twenty-six of the Laws of eighteen hundred and eighty-one, chapter three hundred and sixty-two of the Laws of eighteen hundred and eighty-two, chapter five hundred and fifty-one of the Laws of eighteen hundred and eighty-four, and chapter three hundred and thirty of the Laws of eighteen hundred and eighty-six, by raising the dam not less than eight feet, in accordance with the recommendation of the State Engineer and Surveyor, as contained in Senate document number twenty-nine of eighteen hundred and eighty-nine, so as to restore, as far as practicable, to the Black river, the amount of water diverted from it for the use of the State canals, the sum of twenty-five thousand dollars, or so much thereof as may be necessary; the work to be done under the direction of the Superintendent of Public Works, according to plans and specifications prepared or to be prepared by the State Engineer and Surveyor.'

This item is objected to and not approved, for the same reasons as those stated in objection to the Penataquit creek item.

'For the Superintendent of Public Works, for deficiency in appropriation for exchanging the iron highway bridge crossing the outlet of Crooked lake, in the village of Penn Yan, for another iron bridge to span the entire outlet, authorized by chapter three hundred and eighty-nine of the Laws of eighteen hundred and eighty-eight, four hundred and eighty-two dollars.'

This item is objected to and not approved.

I am advised by the Superintendent of Public Works that this is not a proper charge against the State.

'For ditching on the north side of the Erie canal, easterly and westerly to the State ditch already constructed near the Suiter road in the town of Manlius, county of Onondaga, fifteen hundred dollars; said ditch being for the purpose of properly draining the leakage from the Erie canal, in accordance with the plan and estimate of the State Engineer and Surveyor.'

This item is objected to and not approved.

This appropriation is unnecessary. Chapter 240 of the Laws of 1889, entitled 'An act to provide ditches to carry off the leakage from the canals, and making an appropriation therefor,' was approved by me on May sixth, and the appropriation therein made of twenty thousand dollars is applicable to the work proposed by this item.

'For ditching on the north side of the Erie canal, easterly to Lake brook, and for cleaning out and deepening Lake brook, so as to properly drain the leakage from said canal and prevent the waters of said Lake brook from backing up above the culvert where said Lake brook flows beneath said Erie canal near the village of Kirkville, county of Onondaga, in accordance with the plan and estimate of the State Engineer and Surveyor, two thousand dollars.'

This item is objected to and not approved for the same reason as that stated in objection to the last preceding item.

'For repairing the highway leading south-west from the village of Hogansburgh through the St. Regis Indian reservation, to the St. Lawrence county line, one thousand dollars.'

This item is objected to and not approved. I am advised that there is no merit in this appropriation.

'For the commissioners of fisheries for necessary repairs of the State road from the east line of the town of Forestport, Oneida county, to Woodhull, in Herkimer county, one thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

The Commissioners of Fisheries do not recommend this appropriation.

For the Commissioners of Fisheries:

'And for the necessary repairs of the road from Number Four, in Lewis county, to the Stillwater reservoir, one thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved, for the same reason as that stated in objection to the last preceding item.

'For the purchase of an electric light plant at the Auburn prison and the State Asylum for Insane Criminals at Auburn, five thousand dollars; to be expended under the direction of the Superintendent of State Prisons.'

This item is objected to and not approved.

It is not an advisable expenditure at this time, and I am also informed that if electric light is decided to be necessary for Auburn prison the State can better obtain it from the local company or companies established for furnishing such light in the city of Auburn.

'For the payment of the expenses of cartage of Senate documents to and from the post-office in Albany during the session of eighteen hundred and eighty-nine, the sum of three hundred and seventy-five dollars, to be paid to the parties who rendered the services.'

This item is objected to and not approved.

These expenses should properly be met from the ample appropriations of thirty-three thousand dollars provided for the contingent expenses of the Senate and Assembly.

'For the State Lunatic Asylum at Utica, for deficiency in appropriations for foundations of chimney, repairs of boiler-house, electric light plant and ice house, seven thousand dollars.'

This item is objected to and not approved.

Chapter four hundred and sixty of the Laws of eighteen hundred and eighty-seven contained the following appropriation and condition:

'For the State Lunatic Asylum at Utica, and for the erection of a new engine and boiler-house for electric plant; for purchase of an electric plant and boiler and for setting same, twenty-two thousand eight hundred and thirty dollars. The plans and specifications for the work shall be submitted to and be approved by the Comptroller, and the contracts therefor shall be approved by him and shall be such as to satisfy him that the material will be purchased and the work done within the limits of the appropriation therefor.'

I must decline to countenance what appears to be a violation of the reasonable condition which was a part of the original appropriation.

For the State Lunatic Asylum at Utica:

'For the purchase of two hundred acres of land for said asylum, forty thousand dollars; but no part of the said forty thousand dollars shall be expended until the Comptroller shall certify in writing, to be filed in his office, that the price agreed upon said land is reasonable.'

For the Buffalo State Asylum for the Insane:

'For enlargement of boiler and coal-house, for new boiler and stoker, with setting and connections for dynamos, storage battery, wiring and fixtures, for electric lighting, twenty-seven thousand two hundred and seventeen dollars and forty-eight cents.'

For the Buffalo State Asylum for the Insane:

'And for legal expenses incurred in mandamus proceedings, upon bills to be approved by the Attorney-General and audited by the Comptroller, seven hundred and fifty and thirty-eight one hundredths dollars.'

This item is objected to and not approved.

This appears to be a needless expenditure of money. The Attorney-General of the State could have defended the rights of the State, and the employment of special counsel was unnecessary.

For the State Homœopathic Asylum for the Insane at Middletown:

'And for the erection of a new house for the gardener, eighteen hundred dollars.'

For the State Asylum for Idiots:

'For plumbing in the new dormitory building and for furniture, four thousand dollars.'

For the Thomas Asylum for Orphan and Destitute Indian Children:

'For the erection of a new brick boiler-house, a new steam boiler with steam-heating fixtures for heating the building, seven thousand five hundred dollars.'

For the Hudson River State Hospital for the Insane:

'For new ice-house, barns and stables, shelter-house and new laundry machinery, seven thousand seven hundred dollars.'

For the State Industrial School at Rochester:

'For asphalt pavement, furniture, electric light, laundry and paint-room, forty-seven thousand dollars; but no part of the said forty-seven thousand dollars shall be expended until a contract shall have been executed with sufficient sureties, by the lowest responsible bidder or bidders, after suitable advertisement for the completion of the work and the purchase of the materials, as contemplated, within the limits of this appropriation.'

These several items are objected to, and not approved, for the reason that it is not deemed expedient to make the proposed expenditures at the present time.

'For the New York State Institution for the Blind at Batavia, to be expended by the local board of managers, for sewerage, upon plans to be approved by the State Engineer and Surveyor, thirty thousand dollars.'

This item is objected to and not approved.

This expenditure, so far as I have been able to ascertain, has not been recommended by the State Board of Charities.

'For the stenographers of the Senate and Assembly, for the session of the Legislature of eighteen hundred and eighty-nine, for preparing for publication the Legislative Record of their respective houses, pursuant to the provisions of chapter one hundred and eighty-one of the Laws of eighteen hundred and eighty-seven, the sum of five thousand dollars, namely: For the stenographer of the Senate, two thousand dollars, and for the stenographer of the Assembly, three thousand dollars.'

This item is objected to and not approved.

I am becoming convinced that the Legislative Record is a useless publication, and that as an experiment it has failed. The Legislative Record, whatever may have been the plan of its originators, does not approach the Congressional Record in thoroughness. It is, in fact, little more than a slightly advanced publication of the regular Journals of the Houses with the addition of an again and again republished list of officers and of committees and of various compilations. Last year, with much hesitation, I gave my approval to an appropriation for large and extra compensation, in addition to their regular salaries, to the stenographers mentioned in this item, but there was no understanding that such action was to be considered as establishing a precedent for a similar annual appropriation. Experience has satisfied me that this legislative extravagance should come to an end. I am unable to perceive a single public interest that is served by this publication.

'For the purchase of one and three-quarter acres (more or less) of ground adjoining Washington headquarters, at Newburgh, grading, fencing and improving the same, twenty-five thousand dollars. Said sum to be paid to the trustees of Washington headquarters, and to be expended by them in the purchase and embellishment of said lands. But no part of this appropriation shall be expended until the Comptroller shall certify in writing, to be filed in his office, that the price agreed upon for said land is reasonable, and that the purchase and all contemplated improvements of said land will not cost more than the sum herein appropriated.'

This item is objected to and not approved, for the reason that it is not deemed expedient to make the proposed expenditure at the present time.

'For lighting the State camp ground at Peekskill by electricity during the year eighteen hundred and eighty-nine, five thousand dollars, or so much thereof as may be necessary, the bills therefor to be audited by the Adjutant-General.'

This item is objected to, and not approved, for the same reason as that stated in objection to the last preceding item.

'The balance remaining in the treasury unexpended of the sum of twenty thousand dollars, appropriated by chapter four hundred and sixty of the Laws of eighteen hundred and eighty-seven, for completing the wall along a portion of the bounds of the enclosure of the yard at Clinton prison, being the sum of three thousand nine hundred and one dollars, is hereby reappropriated for the same purpose.'

This item is objected to and not approved.

I cannot learn that any real necessity exists for this appropriation.

'For the State Board of Health, for deficiency for the year ending September thirtieth, eighteen hundred and eighty-nine, the sum of three thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

I am not satisfied that any sufficient reason exists for anticipating a deficiency in the appropriation for the State Board of Health.

'For the purchase of law books for the Supreme Court library in the fifth judicial district, one thousand five hundred dollars, to be expended by the judge in charge of said library.'

'For the library of the Court of Appeals at Rochester, for the purchase of books, to be paid on bills therefor, certified by a majority of the justices of the Supreme Court in the seventh judicial district, one thousand dollars.'

'For the purchase of books for the State law library at Syracuse, to be paid on bills therefor, certified by a majority of the justices of the Supreme Court in the fifth judicial district, one thousand dollars.'

'For a law library of the judges of the Court of Appeals, for the purchase of law books, five hundred dollars, to be paid on bills therefor, certified by the judge having such library in charge.'

'For the Supreme Court law library at Newburgh, in the second judicial district, for the purchase of law books, to be paid on the certificate of the judge having charge of such library, fifteen hundred dollars.'

These several items are objected to and not approved.

These expenditures, I am inclined to think, should not exceed the usual annual appropriation for such purposes. The State provides liberally for its judges, and if an increase in the allowance for law books is advisable, it should properly be made in the annual general appropriation bill.

'For advances by the Comptroller to the clerks of the Senate and Assembly, for contingent expenses of the Legislature and for the purchase of file-boards known as the Keystone file, for the use of the Senate and Assembly, three thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

If, practically, the whole of this appropriation is intended for the purchase of bill files, it is an extravagant sum for such purpose, and if, on the other hand, a large portion is intended for other purposes, the purposes should be specified in order that their propriety may be passed upon by the Executive. The appropriation in the general appropriation bill, to-day approved by me, of thirty-three thousand dollars for contingent expenses of the Legislature, would seem to be ample for all proper expenses of this character.

'For the preparation, printing and binding of five hundred copies of the reports of the decisions of the Commissioners of Claims since the organization of the board to the present time, in one volume, under the direction of the clerk of said commissioners, the sum of two thousand dollars, or so much thereof as may be necessary; said reports shall be prepared in form like that of the reports of decisions of the Supreme Court of this State, and shall be distributed as follows, namely: Two copies to each member of the Legislature, one copy to each State department, one copy to each of the Commissioners of Claims and judges of the Court of Appeals, two copies to each legislative library, and to each judicial district library, one copy to each of the libraries of the Court of Appeals, two copies to the library of the Commissioners of Claims, one hundred copies to the trustees of the State library for exchanges, and the remainder in the discretion of the clerk of said commissioners.'

This item is objected to and not approved, for the reason that it is not deemed expedient to make the proposed expenditure at the present time.

'For the clerk of the Assembly, for the purchase of a fire and burglar-proof safe for the use of the financial clerk of the Assembly, six hundred dollars.'

This item is objected to and not approved.

I am not aware of any necessity which makes this expenditure advisable. In any event, the amount proposed to be appropriated for the purpose is excessive. An ordinary small safe, worth one hundred dollars or less, would meet every requirement. The Capitol building is fire-proof, and well supplied with watchmen at night, while in the daytime the clerk of the Assembly or some of his numerous assistants are presumed to be in the clerk's office. A large fire-proof safe is already in one of the clerk's rooms, and at very slight expense a compartment could be arranged therein for the safe-keeping of such small sums of money as the financial clerk has need to withdraw from the bank and keep on hand.

'For furnishing, for the use of the Assembly committee on judiciary, eleven copies each of the Penal Code, the Criminal Code and the Code of Civil Procedure; one set of Revised Statutes, last edition; two copies of the Rules of Practice and one set of the Table of Statutes of this State prepared by Clarence F. Birdseye, pursuant to resolution of the Assembly, passed January thirty-first, eighteen hundred and eighty-nine, one hundred and sixty-one dollars.'

This item is objected to and not approved.

Almost every year an appropriation of similar character is presented to me for approval, and each year's investigation shows that, with few exceptions, the law books mentioned in the appropriation have disappeared. I was decidedly reluctant to approve such items when they annually covered only five or six sets of some of the law books. Now, when it appears that eleven sets are purchased for the Assembly and nine sets for the Senate, I am compelled to withhold my approval, especially as I am informed that very few of these books are now in the possession of the State. I dislike to appear discourteous to the Legislature, but such disappearance, year after year, of the books of the State involves nothing less than petit larceny. The persons who have taken the books away should be required by the clerks of the Senate and Assembly to return or pay for such books, and thus the State will be reimbursed or saved a needless and increasing annual expenditure. The amount in question is not large, but the principle at stake is of importance. It also seems to me that payment for such expenses should properly be made from the ample contingent fund annually provided for each House.

'For furnishing to the Senate library, two sets Revised Statutes, five volumes New York Reports, one copy Abbott's New York Digest, for eighteen hundred and eighty-eight, nine copies Throop's Civil Code and nine copies Criminal and Penal Code, pursuant to resolution of the Senate, passed January twenty-fifth, eighteen hundred and eighty-nine, the sum of one hundred and seventy-eight dollars and fifty cents.'

This item is objected to and not approved, for the reason stated in objection to the last preceding item.

'For the clerk of the Senate, to pay for services of the superintendent designated by him to have charge of the wrapping department of the Senate, pursuant to resolutions of the Senate passed March twenty-ninth, eighteen hundred and eighty-eight, and January seventeenth, eighteen hundred and eighty-nine, the sum of seven hundred and fifty dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

There is no such officer of the Senate as the superintendent of the wrapping department, and no expenditure for his services is authorized by any law of the State.

'For the clerk of the Senate, for the continuation of the general index of the legislative documents from eighteen hundred and seventy-seven to eighteen hundred and eighty-nine, pursuant to concurrent resolution of the Senate and Assembly, adopted May eleventh, eighteen hundred and eighty-eight, to be paid on the certificate of the clerk of the Senate to the person performing the work, and for the necessary services of additional clerical aid in the desk, the sum of nine hundred dollars.'

This item is objected to and not approved, for the reason that the services were apparently not rendered by authority of any law; and for the further reason that if authorized by law they should be paid for out of the annual general appropriation of three hundred and forty thousand dollars made for the compensation and mileage of members and officers of the Legislature.

For the clerk of the Senate:

'For clerical services to the Senate committee on general laws, for the sessions of eighteen hundred and eighty-eight and eighteen hundred and eighty-nine, the sum of one thousand dollars.'

This item is objected to and not approved.

All proper clerical services for the Senate committees are established by law, and ample provision for payment for such services is made in the annual general appropriation bill.

'For printing five thousand extra copies of the report of the annual meeting of the New York State Dairymen's Association, as provided by resolution of the Assembly passed March twenty-eighth, eighteen hundred and eighty-nine, the sum of thirteen hundred dollars, or so much thereof as may be necessary, to be paid by the Comptroller upon the certificate of the secretary of said association.'

This item is objected to and not approved.

So far as I can learn, no authority of law exists for the printing mentioned. Had a proper bill been passed for such work, I would probably have cheerfully approved the same if its desirability had been shown, but after repeated vetoes of similar appropriations, I cannot countenance the attempt to legalize the resolution simply of one house of the Legislature. The statutes plainly exhibit the way in which such printing can be legally ordered, and this item practically violates and ignores a wise provision of law.

'For the payment of the fees of witnesses, mileage and sheriffs' fees, upon application for executive clemency, as provided by chapter two hundred and thirteen, Laws of eighteen hundred and eighty-seven, the sum of five hundred dollars.'

This item is objected to and not approved.

This appropriation is not necessary, sufficient provision having been made for the same purpose in the item for the executive chamber, contained in the general appropriation bill, which I have to-day approved.

'For the State Treasurer, for deficiency in appropriation for furniture, books, binding, printing and other necessary expenses of his office, for the year ending September thirtieth, eighteen hundred and eighty-nine, the sum of six hundred dollars.'

This item is objected to and not approved.

Ample provision was made in the general appropriation bill of last year for the usual ordinary expenses of the Treasurer's office.

'For the trustees of the State library, for extra expenses of maintenance involved in occupying the new quarters and in reorganizing and recataloguing the library, ten thousand dollars.'

This item is objected to and not approved.

I have carefully read the statement of the secretary of the regents as to the extra expense to meet which this appropriation is desired, and I am not convinced that any pressing necessity exists at the present time for this large additional expenditure. Liberal provision is made in the general appropriation bill, which I have to-day approved, for the ordinary expenses and maintenance of the library.

'For the trustees of the State library, for the purchase of books and for binding, lettering and marking books for the library, during the current fiscal year, in addition to the sums appropriated therefor by chapter two hundred and sixty-nine of the Laws of eighteen hundred and eighty-eight, the sum of four thousand dollars.'

This item is objected to and not approved.

The general appropriation bill authorizes the expenditure of the large sum of fifteen thousand dollars for the purchase of books during the fiscal year beginning October 1, 1889. This is an increase of ten thousand dollars over the amount appropriated last year for the same purpose. In about three months this fund of fifteen thousand dollars will become available, and I am satisfied that no great public interest will suffer by delay in the purchases and work proposed until then.

'For the Superintendent of State Prisons, for repairs to the State plank-road, running from Clinton prison to Dannemora station, on the Ogdensburg and Lake Champlain railroad, two thousand dollars.'

This item is objected to and not approved.

From all the information I am able to obtain, this expenditure is not necessary at the present time.

'For the State Normal and Training School at Cortland, to be expended under the direction of the local board of managers, for removing boilers and erecting a building for the same, heating and ventilating school buildings, ten thousand dollars.'

This item is objected to and not approved, for the reason that it is not deemed expedient to make the proposed expenditure at the present time.

The people are poor, and the burden of taxation oppresses this year even more heavily than ever.

'For the State Normal and Training School at Fredonia, to be expended under the direction of the local board of managers, for furnishing industrial department, gymnasium, chapel and school-rooms, for fitting up and furnishing laboratory, library and reading-rooms, for providing and furnishing new recitation rooms for practice classes in present building, and for painting, alteration in present building and repairs, twelve thousand five hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved, for the same reason as that stated in objection to the last preceding item.

For the State Normal and Training School at Fredonia:

'And for additions to the present building, to provide new school-rooms, work-rooms, chapel and boiler-house, for raising present chapel roof for second story and dividing same into school-rooms and for additional heating and ventilation, forty-nine thousand dollars, or so much thereof as may be necessary, all to be expended by the local board of managers of said school, after plans and specifications, and a contract executed with proper sureties for the completion of the same within the sums herein appropriated, shall have been approved by the said local board of managers, by the Superintendent of Public Instruction and by the Comptroller.'

This item is objected to and not approved, for the same reasons as those stated in the last two preceding items.

'For the State Normal and Training School at Potsdam, to be expended under the direction of the local board of managers, to pay insurance due, six hundred and seventy dollars and seventy-five cents.'

This item is objected to and not approved.

I am not aware of any reason why the State should deviate from its established policy of being its own insurer.

For the State Normal and Training School at Potsdam:

'And for supplies, furniture and carpets and for general repairs and betterments, four thousand three hundred and seventeen dollars.'

This item is objected to and not approved, for the reason that it is not deemed expedient to make the proposed expenditure at the present time.

'For the State Normal and Training School at New Paltz, for furnishing lighting, and changes in the present building, and grading and walks, nine thousand six hundred and seventeen dollars.'

This item is objected to and not approved, for the reason that it is not deemed expedient to make the proposed expenditure at the present time.

'For the State Normal and Training School at Oneonta, for furnishing and painting the assembly hall, schoolrooms, offices and parlors, and for plumbing and furnishing the science room, the sum of thirty-two thousand eight hundred dollars.'

This item is objected to and not approved, for the same reason as that stated in objection to the last preceding item.

'For the State Normal and Training School, at Oneonta, for grading, excavating and repairing grounds, and for walks, the sum of fifteen thousand dollars.'

This item is objected to and not approved, for the same reasons as those stated in objection to the last two preceding items.

For the State Normal and Training School at Oswego:

'And for providing necessary implements for carrying out the provisions of chapter three hundred and thirty-four of the Laws of eighteen hundred and eighty-eight, the sum of twelve hundred dollars.'

This item is objected to and not approved.

No other normal school in the State has applied for a special appropriation for such purpose.

'For the Normal and Training School at Brockport, to be expended by the local board of managers, for ventilation, furniture, grading and fencing grounds, stone walks, outbuildings, and for repairs of old building, the sum of twelve thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved, for the reason that it is not deemed expedient to make the proposed expenditure at the present time.

For the Superintendent of Public Instruction:

'For deficiency in the appropriation for holding uniform examinations for commissioner's certificates, one thousand five hundred dollars.'

This item is objected to and not approved.

Extremely ample provision has been each year made for the expenses of the Superintendent of Public Instruction, and I am not aware of any sufficient reason why he should exceed the appropriations thus made.

For the Superintendent of Public Instruction:

'For deficiency in the appropriation for holding examination for State certificates, one thousand dollars.'

This item is objected to for the same reason as that stated in objection to the last preceding item.

For the Superintendent of Public Instruction:

'For deficiency in appropriation for clerk hire for the fiscal year ending September thirtieth, eighteen hundred and eighty-nine, one thousand four hundred and seventy-three dollars and fifty-seven cents.'

This item is objected to for the same reasons as those stated in objection to the last two preceding items.

For the Superintendent of Public Instruction:

'And for deficiency in the appropriation for furniture, books, binding, blanks, printing and other necessary expenses of the office of Superintendent of Public Instruction, one thousand dollars.'

This item is objected to and not approved, for the same reasons as those stated in objection to the last three preceding items.

'For payment for printing, binding and lithographing done in pursuance of chapter two hundred and forty of the Laws of eighteen hundred and eighty-five, not already paid for, the sum of four thousand three hundred and eighty-three dollars and forty-two cents, or so much thereof as may be necessary.'

This item is objected to and not approved.

I am informed by the Comptroller that this is supposed to be for the payment of an illegal bill for printing volume fifteen of the Colonial History, which bill has been heretofore rejected and disallowed.

Several other appropriations contained in the bill are deemed excessive, but I have no power to reduce them, as I am compelled by the Constitution to approve or disapprove an item of appropriation as a whole.* It is, however, to be remembered that every item is subject to the general clause which declares that ' no warrants shall be issued except in case of salaries until the amounts claimed shall have been audited and allowed by the Comptroller, who is hereby authorized to determine the same.' I have, therefore, approved several items, relying upon the Comptroller to rigidly exercise the power of audit given him in the first paragraph of this bill."

June 15.

Veto of item of appropriation contained in Assembly bill, chap. 569, entitled "An act making appropriations for the support of government."

"And for traveling and other incidental necessary expenses of said commissioner, one thousand five hundred dollars, or so much thereof as may be necessary."

This item is objected to and not approved.

No necessity exists for such an appropriation. By chapter 283 of the Laws of 1889, the powers of the State Commissioner in Lunacy are suspended, except so far as they are to be exercised as a member of the State Board of Lunacy Commissioners, created by said act, which act also makes adequate provision for all contingent expenses of the board."

June 15.

Veto of items in Assembly bill, chap. 493, reappropriating balances for the State ditch in Onondaga county and for Cayuga creek.

" ' For improving, enlarging and removing obstructions from channel of State ditch running from Liverpool to Mud lock, in town of Salina, Onondaga county, as provided in chapter three hundred and fifty-one of the Laws of one thousand eight hundred and eighty-seven, four thousand dollars.'

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* Const. 1846, art. 4, § 9, am. 1874.

This item is objected to and not approved.

This appropriation is unnecessary. Chapter 240 of the Laws of 1889, entitled "An act to provide ditches for carrying off the leakage from the canals and making an appropriation therefor," was approved by me on May sixth, and the appropriation therein made of twenty thousand dollars is applicable to the work proposed by this item.

'For improving channels of Cayuga creek and its tributaries, as provided in chapter four hundred and fifty-five of the Laws of one thousand eight hundred and eighty-seven, five thousand dollars.'

This item is objected to and not approved, for the same reasons as stated in objection to the preceding item."

June 15.

Veto of item in Assembly bill, chap. 516, reappropriating money for canal awards.

'For the necessary surveys and maps for the use of the Board of Claims, in connection with claims arising on account of the canals, the sum of five thousand dollars, or so much thereof as may be necessary, to be expended under the direction of the State Engineer and Surveyor.'

This item is objected to and not approved.

It would seem that the State Engineer and Surveyor's office is already provided with sufficient clerical force and other means to make all such surveys required by the Board of Claims, or any other department of the State government, without the need of additional appropriation by the State. It is further assumed that the State Engineer and Surveyor is entirely willing to do such work upon proper request."

June 15.

Veto filed with Assembly bill entitled "An act making an appropriation for continuing work upon the Capitol, and appointing commissioners to supervise the plans thereof and the plans thereon."

"My views upon appropriations for the Capitol were quite fully expressed in two certain memoranda filed by me on June 9, 1888, upon approving the Assembly ceiling appropriation bill and the bill for continuing work on the State library.* It will be remembered that I then protested against both of those measures upon the distinct grounds that I was opposed to further commissions composed of inexperienced men, not architects or builders, and that the Capitol work should be solely entrusted to the regular Capitol Commissioner, to wit: Isaac G. Perry, an able, responsible and competent architect and builder, and a thoroughly honest man.

I insisted that last year's bills were unwise, and that the course pursued by the Legislature was unbusinesslike, and that it furnished a pernicious precedent and would prove unsatisfactory to the State in its results. I formally signed the measures, as I then stated, because of the pressing emergencies which were then presented, and not because they really met my approval.

It is believed that the people are opposed to a repetition of legislation of this character. Another year has passed, and now another unsatisfactory measure is presented — a mere temporary expedient — and I am asked to approve of it because it is again claimed that another emergency is presented, and that a great necessity exists for the continuance of the work projected. Another commission is proposed, which is to have supervision of the work, consisting of one manufacturer and two lawyers and politicians, and Commissioner Perry is to be associated with them.

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* *Ante*, pp. 608, 610.

I must adhere to my convictions expressed last year, and cannot again yield them because of the asserted emergency presented.

I should have been glad to have approved that portion of the bill relating to desirable improvements and repairs to the finished portion of the Capitol, but I am advised by the Attorney-General that the bill has been so framed by the Legislature as to compel me to approve the whole appropriation or none of it.

Appropriations for the Capitol must wait until some definite, permanent, comprehensive and business-like policy shall be adopted by the Legislature that will meet the approval of the people of the State."

June 15.

Veto filed with Senate bill entitled "An act to abolish the office of State Agent for Discharged Convicts."[37]

"In my Annual Message of 1887 I recommended the abolition of the office of State Agent for Discharged Convicts. The Legislature, however, paid no attention to the recommendation. I specifically renewed it in my Annual Message of 1888, but again no action was taken. In my message of 1889 I renewed generally all my previous recommendations.

On the last day of the present session this bill was passed, but passed in so defective a shape that its approval is impossible. It is fatally defective because

First. Although passed on May sixteenth last, it provides that it shall take effect on May first last. This is impossible. The vitality of a bill is destroyed by any provision which declares that it shall go into effect on a day prior to its passage.

Second. While this bill provides for the abolition of this office, the supply bill proceeds upon the theory that the office is not to be abolished, and makes the usual appropriation to the State agent of moneys for distribution to discharged convicts.

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[37] The office of State Agent for Discharged Convicts was abolished in 1895, chapter 93.

If this bill should be signed there would be no appropriation whatever available for the discharged convicts, because the agent could not use the moneys, and the wardens of the prisons could not use them, because there is no appropriation made to them, and the convicts must go without these moneys until next year.

It was clearly an inadvertence, but is, nevertheless, fatal, and the wardens of the three State prisons have united in a communication to me, asking that upon this latter ground the bill be not approved at this time.

The defect can be corrected by the next Legislature, but, in the meantime, it seems to be absolutely necessary that the State agent should continue in the discharge of his duties."

June 15.

The following is a list of bills remaining in the Governor's hands at the time of the adjournment of the Legislature, which did not receive his approval within thirty days, and, therefore, failed to become laws, together with memoranda relating thereto:

The Legislature of 1889, at its adjournment, May fifteenth, left 451 bills in the hands of the Governor, 278 of which he has approved.

The constitutional limit for consideration expired Saturday, June fifteenth, and the bills not then acted upon failed to become laws. The following is a list of those not signed, with informal memoranda relating to them:

Senate bill No. 416, to amend the act providing for placing electrical conductors under ground in cities in this State and for commissioners of electrical subways.

By a clerical error this bill proposes to amend chapter 495 of the Laws of 1885 instead of chapter 499, the chapter intended.

Assembly bill No. 982, to amend chapter 155 of the Laws of 1864, relative to the care and education of deaf mutes.

The title of this bill, by clerical error, proposes to amend chapter 155 of the Laws of 1864 instead of chapter 555, which was the chapter intended.

Assembly bill No. 590, to amend chapter 482 of the Laws of 1875, relating to powers of boards of supervisors to regulate fire districts in unincorporated villages.

The amendment proposed by this bill has already been incorporated by precisely the same language in chapter 264 of the Laws of 1889, amending the same section proposed to be amended by this bill.

Assembly bill No. 437, to amend the act for the election of town auditors.

This bill proposes to amend four sections of the present statute to read precisely as at present, except that the bill contains a clerical error in the attempt to copy the present statute.

Senate bill No. 626, to amend the act providing for the relief of indigent soldiers, sailors and marines, and the families of those deceased.

I regret that this bill is so defectively drafted that I cannot, consistently with sound principles of legislation, approve it. The bill proposes to amend four sections of an act which has but two sections. The error has arisen from setting out to amend an amendatory act instead of amending the original act as amended by the amendatory act. This procedure results in leaving two sets of statutes in force covering the same subject-matter with slight variations, adding uncertainty and confusion to a law to be administered by local officers, for whom the law should be made specially clear.

Senate bill No. 448, to amend chapter 71 of the Laws of 1884, to authorize the use of State armories by associations of discharged soldiers.

Defectively drafted. This bill amends the present statute in such a way as to strike out the title thereof altogether, thus decapitating, as it were, the act proposed to be amended. I regret that the existence of so serious a clerical error prevents my consideration of the bill upon its merits.

Assembly bill No. 523, to amend the act for laying out and improving roads and avenues in the village and town of Saratoga Springs.

Defectively drafted. This bill amends section 4 of an amendatory act, which has but one section. The evident intent of the framer of the bill was to amend section 4 of the original act.

Assembly bill No. 393, to amend the statutes relating to the purchase of road implements by commissioners of highways.

Defectively drafted. The bill amends section 1 of the amendatory act in such a way as to leave two sections standing covering the same subject-matter, with slight variations, so that it will be difficult to tell which section prevails over the other.

Assembly bill No. 1239, to amend the charter of the city of Binghamton.

The only change of substance proposed by this bill is to make the fiscal year of the city commence in July instead of February. It was evidently also intended to correct a clerical error in the present act consisting of a reference to "section eleven of this act" instead of "section eleven of this title." The error is made worse by changing to "section two of this act." The substantial amendment proposed does not seem to be of sufficient importance to justify the repetition, with aggravation of the clerical error in the section proposed to be amended.

Assembly bill No. 518, to amend the charter of the city of Rome so as to enable the board of education to borrow money for the erection of school buildings.

Defectively drafted. The bill provides that the board of education shall borrow the money estimated necessary, only after the common council has levied the amounts so estimated. It was evidently intended that the board of education should have power to borrow the money after the estimates had been approved by the common council. Of course, it would be unnecessary, as the bill is now worded, for the board of education to borrow the money at all, as the money would be realized from the levy, which must precede the issue of the bonds, as soon as it could be realized from the sale of the bonds. The object of the bill is meritorious, but in its present form it would accomplish nothing.

Moreover, the bill proposes to amend section 4 of a title of the charter which has no section 4 to be amended.

Assembly bill No. 208, to amend the act authorizing the incorporation of rural cemetery associations.

By apparent oversight this bill omits an amendment made in 1881 to the section proposed to be amended. There appears to be no good reason why the amendment of 1881 should be struck out.

Assembly bill, not printed, to incorporate the Little Equinunk Bridge Company.

This bill contains several clerical errors, among which are references to the Court of Common Pleas instead of the County Court, and the Commonwealth instead of to the State, and is probably unconstitutional, as making no provision for notice to owners of proceedings for condemning lands under the right of eminent domain.[1] The bill prohibits the discharge of fire-arms "near the bridge," which, to say the least, is very indefinite.

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[1] Const. 1846, art. 1, § 6.

Assembly bill, not printed, to provide for the printing and distribution of 6,000 copies of the memorial proceedings of the Legislature on the death of General Philip H. Sheridan.

By evident inadvertence, this bill fails to make any specific appropriation for the purposes named, and would, therefore, be wholly ineffectual to accomplish the purpose of it. So far as an expenditure is authorized, the amount thereof is unlimited.

Assembly bill No. 408, to provide for the distribution of money to agricultural societies.

The object of this bill is meritorious. The design of the bill is to reapportion and distribute among the agricultural societies of the State such moneys as have been heretofore appropriated and not paid out to certain societies because of their failure to file the proper affidavits entitling them thereto. The result has been that a fund has accumulated in the treasury for a number of years which cannot be paid out for other purposes. The bill proposes to prevent such accumulations hereafter, and to that effect intended to provide that moneys appropriated for any county society and not paid at the end of one year, should, during the next year, be included in the general fund and be apportioned among the societies entitled to share in the same for that year.

But by a clerical error the bill reads: "Whenever there shall remain in the State treasury for one year or for any time less than two years," instead of "for one year or for any greater time less than two years."

By the present law the executive committee of the State Agricultural Society makes the apportionment. This bill proposes to confer such power upon the secretary. The present system seems preferable.

The moneys already accumulated in the treasury are proposed by this bill to be paid out in five annual installments. It is worthy of consideration whether the money could not be used to better advantage if paid in a single installment.

Senate bill No. 399, to change the name of the corporation known as the Brooklyn Nursery.

Assembly bill No. 1204, to change the name of the corporation known as the Foundling Asylum of the Sisters of Charity of the city of New York.

Unnecessary special legislation. There is a general law providing for changing the names of corporations of this nature without the necessity of applying to the Legislature.

Senate bill No. 376, to incorporate the Hill Land Horticultural Society of southern central New York.

Unnecessary special legislation. There are already general laws authorizing the incorporation of horticultural societies in this State. If such general laws are not sufficient to accomplish the proper objects proposed by this bill, then such general laws should be amended so as to avoid the necessity of such special legislation.

Assembly bill No. 86, to authorize the construction of sewers in the village of Tonawanda.

A general law has been enacted the present year applying to all villages, whether incorporated by general or special acts, authorizing the construction of sewers in villages upon substantially the same system as is proposed by this bill. This bill has, therefore, now become unnecessary special legislation.

Assembly bill, not printed, entitled "An act to incorporate the Supreme Council of the Emerald Beneficial Association."

A general act has been passed during the present session of the Legislature providing for the incorporation of supreme and subordinate lodges of fraternal and beneficial societies, and bringing them under the supervision of the Insurance Department. The Supreme Council of the Emerald Beneficial Association can now become incorporated under such general act, which it is believed will answer the purposes of this society much more effectually than incorporation by this special law.

Senate bill No. 480, to incorporate Delaware Tribe No. 44 of Improved Order of Red Men of Eldred, Sullivan county, New York.

The objections made to the Assembly bill last above mentioned apply with equal force to this bill. Fraternal and beneficiary societies may now be incorporated under the general law above referred to, passed during the present session.

Assembly bill No. 720, to enable the Tribe of Improved Order of Red Men to take, hold, mortgage and convey real and personal property.

This bill proposes to enable unincorporated associations of the order mentioned to take and convey real estate through the medium of certain designated trustees, whose names shall be filed in the office of the Secretary of State.

It has hitherto been the policy of the State to allow associations to take real estate in the association's name only in case of incorporated associations. The burden of tracing titles through such an unincorporated association would be greatly increased, inasmuch as it would be necessary in each case to make inquiry at the office of the Secretary of State and obtain from him a certificate as to whether the persons named in the conveyance were the trustees duly qualified to take or convey such lands. A general law has been enacted during the present year, under which fraternal and beneficiary societies may be incorporated with no more trouble and expense than is involved in the system proposed by this bill for taking and conveying real estate.

Assembly bill No. 721, to enable unincorporated posts of the Grand Army of the Republic to take, hold and convey real and personal estate.

The objections made to Assembly bill No. 720 last above mentioned, apply with equal force to this bill.

Senate bill No. 522, for the incorporation of ichthyological societies.

There already exists an unnecessary number of general statutes in this State for the incorporation of societies representing the general objects for which ichthyological societies are proposed to be incorporated by this bill. It seems unnecessary to add another to the already overgrown list of such statutes.

Assembly bill No. 1181, to amend the act incorporating Poughkeepsie Associated Fire Department.

One of the amendments proposed is to exempt the real and personal property of this corporation from taxation. I have hitherto refused to approve a number of special bills proposing to exempt, one at a time, the property of benevolent or charitable corporations from taxation upon the ground that one such corporation ought not to be compelled to pay taxes in one locality while another like corporation in another locality is exempt therefrom. The laws exempting property from taxation should be uniform and operate equally throughout the State.[38]

Assembly bill No. 562, to enforce the collection of taxes in Rockland county.

This bill proposes to add another to the fifteen or more special laws now existing for the sale of lands for unpaid taxes in as many different counties in this State. I have already, during the present session, refused to approve several bills amending such special laws, upon the ground that these special laws should all be repealed, and that a general law should be enacted in their place providing a uniform system for all counties similarly situated.

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[38] An act was passed in 1891, chapter 163, amending the Revised Statutes by adding a provision exempting from taxation the real property of fire companies not exceeding $15,000 in value. This exemption was continued in the Tax Law of 1896, chapter 908, section 4, subdivision 8.

Assembly bill, not printed, to authorize highway commissioners of the towns of Westfield and Chautauqua, in Chautauqua county, to open a road through the town of Portland.

Unconstitutional special legislation. This is clearly a local bill for the opening of a road or highway. Article 3, section 18 of the Constitution provides that the Legislature shall not pass a local bill opening roads or highways.

Assembly bill No. 604, to provide for the location of a boulevard or highway from the northerly part of the city of Buffalo to the southerly bounds of the village of Niagara Falls.

This bill provides for the issuing of bonds and for raising the money necessary for the construction of the proposed boulevard. Throughout the bill the language used is a "boulevard or public highway." Section 15 of the bill further expressly provides that "all parts of said boulevard or public highway shall be a public work, and shall be constructed for the accommodation, convenience and safe traveling of the public."

It would seem clear, therefore, that this bill is a local bill for laying out a road or highway. Article 3, section 18 of the Constitution provides that the Legislature shall not pass a private or local bill laying out or opening roads or highways. If this bill is not clearly unconstitutional, as it appears to be, the question of constitutionality is at least sufficiently doubtful to render the bonds that would be issued thereunder of uncertain validity, and their negotiation would be impossible. It would, therefore, be useless to approve this bill in its present form. The object proposed by this bill seems to be desirable, so far as I have been able to understand the local situation, and I should have been glad to have approved a bill which would be valid for the accomplishment of such purpose.

Assembly bill No. 58, to divide Steuben county into three jury districts and providing for the erection of a courthouse and holding court therein.

This bill is clearly unconstitutional. The bill proposes to allow the city of Hornellsville to borrow money by the issue of bonds for the erection of a court-house within the city, the title to which shall be in the county. Article 8, section 11 of the Constitution provides that no city shall be allowed to incur any indebtedness except for city purposes. The purchase by a city of property to be owned by the county is clearly not a city purpose.

Assembly bill No. 386, authorizing the continuance of the ferry between Tarrytown and Nyack.

Unconstitutional. The prohibition in this bill against any other ferriage within a mile below or above the ferry named is probably unconstitutional as granting an exclusive franchise.[m]

Asembly bill No. 519, to create a board of park commissioners for the city of Utica.

Asembly bill No. 1200, to provide for the construction and maintenance of a system of sewerage in the city of Hornellsville.

Each of these bills specially names the persons to be appointed commissioners of sewerage in said cities. While the commissioners named are worthy and competent citizens, the general practice of legislative appointment of boards of city officers has in many cases worked badly. The only safe rule is that which I adopted at the commencement of the present session and have since uniformly followed, requiring that such boards shall be appointed by the local authorities or elected by the people.[*]

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[m] Const. 1846, art. 3, § 18, am. 1874.

[*] Const. 1846, art. 10, § 2.

Assembly bill No. 856, to amend chapter 573 of the Laws of 1886, relating to the formation of town and county co-operative insurance companies.

These companies are not under the supervision of the Insurance Department. This bill proposes to extend the risks which these companies may take to buildings not detached in cities and villages, whereas the present law permits them to insure buildings in cities and villages only in case such buildings are detached. The Superintendent of Insurance deems this unwise, especially in view of the fact that the public have no means of ascertaining through the Insurance Department the financial standing of these companies. I understand that the objections of the Insurance Department to this extension would be substantially obviated if these companies were brought under the supervision of that department, and that the companies are, in fact, desirous of coming under such supervision. It seems wise, therefore, to postpone the operation of this bill until the next Legislature can embody both of these provisions in one bill.

Assembly bill No. 1209, to revise the charter of the city of Dunkirk.

This bill contains many important amendments to the charter, which are approved by the local authorities, and are evidently desirable, but the last section of the bill contains the strange innovation that every deed of lands in the city or town of Dunkirk, before being recorded in the county clerk's office, shall be presented to the assessors of said town, and that the county clerk shall forfeit ten dollars in case he shall record any such deed not indorsed with a certificate by the assessors of such presentation to them. The objections to this anomalous procedure are obvious. The assessors are not continuously in session, and great delays in recording deeds would necessarily be occasioned, and the title to real estate purchased might be lost by reason of such delays.

Senate bill, not printed, to amend the charter of the city of Rochester.

This bill proposes to give to the members of the board of education of the city of Rochester an annual salary of five hundred dollars each. The members of the board of education of that city, in accordance with the custom prevailing generally in the various cities of the State, now serve without compensation. This amendment is, therefore, an innovation, and is, as I think, in the wrong direction. The present system has worked satisfactorily. My opinion is confirmed by that of the Superintendent of Public Instruction, that the educational department of cities will be administered more carefully in the public interest by continuing the present system of service without compensation.

Assembly bill No. 922, entitled "An act to release to Harry D. Hurford and Bessie P. Barnett the right, title and interest of the People of the State of New York in certain real estate in the village of Cooperstown, Otsego county, New York."

Assembly bill No. 782, to release to Henry Spicer and others the interest of the People of the State of New York, by escheat and otherwise, in certain lands in New York city.

Senate bill No. 331, to release to Jacob Scherer certain lands which have escheated to the State.

Assembly bill No. 1103, to release to George Feller the interest of the State acquired by escheat in Allegany county.

Asembly bill No. 701, to release to Mary Greene the interest of the State, acquired by escheat, in certain lands in Niagara county.

The five bills above mentioned are all ordinary escheat bills. A general bill was introduced in the present Legislature, and passed the Assembly, providing for the release of escheated lands, in proper cases, by the Commissioners of the Land Office, a board composed of the Lieutenant-Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor. This board is better adapted than the Legislature to investigate, with the necessary care and deliberation, the merits of all applications for release of escheated lands. Applications could be made to the board at any time during the year.

The advantages of such a general law over the system of special legislation for each case, heretofore in vogue, are obvious and important, and have been fully set forth in my messages to the present Legislature. During the session of the Legislature I refused to sign any of the numerous special escheat bills presented to me for approval, and I see no reason for treating differently those left on my hands upon the adjournment of the Legislature. This seemingly harsh course is necessary in order to procure general legislation. There is no reasonable doubt that a proper general law will be passed early in the next session of the Legislature, and no great hardship can accrue to these claimants from waiting until that time.

Senate bill, not printed, authorizing the treasurer and comptroller of the city of New York to examine the claim of James A. Monaghan, and to pay the amount justly due.

Senate bill, not printed, for the relief of Michael Dolan and George L. Loutrel.

Assembly bill No. 664, to authorize the comptroller of the city of New York to examine the claim of John J. Clarke, and to audit and allow the same, and to pay the amount justly due.

Senate bill No. 232, to authorize the board of assessment and apportionment of the city of New York to examine into and determine the claim of Christian C. Hottenroth, for damages to property in the city of New York.

Assembly bill No. 836, amending the act authorizing the board of assessment and apportionment of the city of New York to audit the claim of representatives of the firm of S. P. Dismore & Co.

Assembly bill No. 418, for the relief of James A. Vogel.

Assembly bill No. 967, for the relief of Daniel McCabe, assignee, for services rendered and materials furnished in putting up window shades and awnings upon certain public buildings in the city of New York.

Senate bill No. 604, to authorize the board of assessment and apportionment of the city of New York to examine, audit and pay the claim of Thomas O'Connor.

Senate bill, not printed, in relation to the payment of the salary of John H. Roberts, formerly the chief recording clerk of the city and county of New York.

Assembly bill No. 847, to provide for the payment of the salary of John A. Stemmler as justice of the district court of the city of New York for the seventh judicial district.

The foregoing are private claim bills against the city of New York. The local authorities of that city have filed with me objections to each of said bills, with the request that I should not approve any of them. Some of them may be meritorious, but some are certainly stale and of doubtful propriety. These bills are essentially local in their character, and knowledge of the local situation is necessary in each case to form a satisfactory judgment of the merits of the bill. In the limited time at my disposal for the examination of the unusual number of bills presented to me upon the adjournment of the Legislature, I have been unable to give these bills such examination as satisfies me that I ought to approve any of them, in view of the objections made to them all. The local authorities of New York city, who must be fairly acquainted with the situation of each case, having assumed the burden of objecting to all of these claims, I defer to their judgment and permit them to assume the responsibility of the defeat of these measures.

Assembly bill No. 567, making appropriations for the payment of awards made by the Board of Claims, and for other purposes.

I make no objection to the *appropriation* for the payment of awards mentioned in this bill, but I do object to the *legislation* contained in sections 3 and 4. This is essentially an appropriation bill and should have been confined strictly to the making of appropriations. Sections 3 and 4 are of doubtful propriety. While there may be considerable merit in the payment of interest by the State, so far as pending or future awards are concerned, I am not prepared to say that all awards made since the organization of the State Board of Claims should now be revived and revised for the purpose of allowing interest upon them. Many of such awards were entirely satisfactory both to the claimants and to the State, and there is no propriety in now disturbing them.

The authors of the bill ought not to have imperiled the whole bill by the insertion of objectionable sections. The bill cannot be approved in part. Besides, if the legislation in reference to interest is proper at all, it should have been incorporated in the general act providing for the organization of the Board of Claims.

Senate bill, not printed, making an appropriation for payment of female deputy factory inspectors.

This bill is rendered unnecessary in consequence of my disapproval of the defective bill providing for the appointment of the officials above mentioned.

Senate bill No. 597, amending the Rochester charter.

This bill did not pass the Legislature, but was delivered to me in error by the Senate clerk.

June 15. The omnibus veto included the following bills:

A. 725. Syracuse, canal bridge at Crouse avenue in, making appropriation for construction of.

A. 813. Oswegatchie, town of, town meeting, to legalize proceedings of.

A. 244. Cohoes charter, amending generally.

S. 88. Salt springs and the manufacture of salt, amending act concerning.

A. 617. Buffalo police department, amending act to establish.

A. 852. Supervisors, boards of, to confirm audits of accounts by.

S. 586. Criminal Procedure, Code of, section 597, amending. (Bail.)

S. 608. Elevated railway income percentage special tax receipts, to regulate custody and disbursement of. (Harvey claim.)

S. 245. Long Island City charter, amending. (Overseer of the Poor.)

S. 268. Claims, Board of, claim of Salmon Tuttle, to hear.

S. 171. Claims, Board of, claim of James O'Brien, to hear.

A. 1101. Cochecton, Delaware river at, making appropriation to improve navigation of.

A. 571. Fort Hunter, embankment along Schoharie creek, making an approriation for construction work.

A. 918. Buffalo Association for the Relief of the Poor, amending act to incorporate the.

A. 616. North Collins, town of, to enable electors of to vote by districts.

A. 724. Syracuse, canal bridge at Clinton street, making appropriation for construction of.

A. 873. Malone, State Armory at, making appropriation for erection of.

A. 607. State armories, amending act authorizing purchase of lands for erection of.

A. 415. Claims, Board of, claim of John F. McGowan, to hear.

A. 872. Fort Defiance, Schoharie valley, making an appropriation to perpetuate the memory of the defenders of.

A. 455. Penn Yan, State armory at, making appropriation for erection of.

A. 502. New York City Consolidation Act, section 11, amending. (Tenement houses.)

S. 569. Niagara Falls, State armory at, making appropriation for erection of.

S. 531. New York city, to secure adequate compensation for right to construct electric conductors in.

S. 612. Pendency of actions, to direct recording of certain notices of.

S. 452. Royalton, making an appropriation for construction of a vertical retaining wall along Erie canal at.

S. 324. New York City Consolidation act, sections 322 and 324, amending. (Repairs of pavements.)

S. 441. Brooklyn, to create two additional local inferior courts in.

S. 199. Town Officers, amending act to reduce number of.

S. 611. Yonkers Water Supply, amending act to provide for.

S. 539. Claims, Board of, conferring jurisdiction upon, to hear certain claims. (Archibald McIntyre claim.)

S. 318. Geneva, State armory at, making appropriation for erection of.

S. 445. Glens Falls, State armory at, making appropriation for erection of.

A. 817. Newark, canal bridge at, making appropriation for construction of.

A. 1010. Geneva, town of, Indian Mound in, to authorize purchase of.

A. 868. Phelps, town meeting, to legalize action of.

S. 246. Claims, Board of, claims of James Frazee and others, to hear.

A. 784. Cortland, State armory at, making appropriation for erection of.

S. I. 790. Wheat, adulterated, to prevent the sale and delivery of.

S. 551. Lockport Episcopal Cemetery, for removal of bodies from.

S. 627. Railroad companies, Street Surface, consents to and percentages to be paid by, relative to.

S. 497. Brooklyn, police patrolmen in, amending act relative to.

S. 169. Stockholders to mortgages, in relation to consents of certain.

A. 999. Whitesboro, normal school at, to establish.

A. 541. Fairfield, normal school at, to establish.

A. 719. Watkins, normal school at, to establish.

A. 540. Saratoga Springs, normal school at, to establish.

A. 542. Jamaica, normal school at, to establish.

A. 998. White Plains, normal school at, to establish.

A. 718. Claims, Board of, claim of Charles M. Brown, to hear.

A. 717. Claims, Board of, claim of John D. Hutchinson, to hear.

A. 865. Claims, Board of, claims of Steuben county for moneys expended in the conviction of Thomas Redding, to hear.

A. 968. Cortland, Union Free School in, amending act for establishment of.

A. 1161. Chenango Forks, Chenango river at, for construction of fishways in dam across.

S. 356. New York and Brooklyn Tunnel Company, to incorporate the.

A. 197. Delaware river, shad and game fish in, for the protection of.

A. 775. Villages, in relation to assessments for local improvements in certain.

A. 765. Game law, amending. (Fish in Lake George.)

A. 879. Long Island City, in relation to parks and parade ground in.

A. 743. Highways, for construction of, between towns divided by a navigable tidal stream.

A. 270. Oswego and Seneca rivers, fish-ways in, amending act for construction of.

A. 575. Buffalo, Le Couteulx St. Mary's Institution for the improved Instruction of Deaf-Mutes at, making an appropriation for the erection of buildings for use of.

A. 412. Claims, Board of, claim of Harriet M. Hendricks, to hear.

A. 995. Wendellville, pier or breakwater at, on Tonawanda creek, authorizing construction of.

A. 585. Utica, board of police and fire commissioners, amending act to establish.

A. 727. Claims, Board of, claim of John R. Putnam, to hear.

A. 379. Buffalo fire department, amending act relating to.

A. 781. Claims, Board of, claim of Elizabeth W. Pilon, to hear.

A. 1213. New York city, poor adult blind in, amending act to authorize appropriations for.

A. 261. New York city, old armory building in, in relation to.

A. 1210. Passenger cars, to regulate the lighting of.

A. 1086. New York city, commissioners of docks, amending act fixing salaries of.

A. 705. Penal Code, section 473, amending. (Public officers.)

A. 819. New York city, Van Courtlandt Park in, for preservation of ancient vaults and burial plots in.

A. 980. Public Instruction consolidation act, amending. (Powers of Union free school districts other than in cities and villages.)

A. 834. Stillwater, charter, amending generally.

A. I. 1250. Penal Code, section 290, amending. (Pawnbrokers.)

S. 261. Hudson, charter, amending generally.

A. 977. New York city, premises No. 209 Hudson street, to enable courts of justice to receive certain testimony relative to.

A. 844. Societies or clubs for social and recreative purposes, amending act for incorporation of.

A. 768. Livonia, town of, Livingston county, to authorize board of auditors to audit claims of Julius C. Reed and others.

A. 508. Railroad corporations, amending act to authorize formation of, relating to construction of elevated railroads outside of New York city.

A. 1085. New York city, patrolmen acting as precinct detectives in, to authorize fixing salaries of.

A. 1011. Railroad corporations, authorizing certain to use tracks of other companies for a distance not exceding 2,000 feet.

A. 167. Pelham, town of, amending act authorizing purchase of bridge by.

A. 992. New York city, Franklin Loan and Trust Company, amending act incorporating.

A. 1169. Penal Code, subdivision 4 of section 640, amending. (Malicious destruction of property.)

A. I. 1142. Rome, canal wall at, reappropriating unexpended balance for construction of.

A. 993. Civil Procedure, Code of, subdivision 5 of section 263, subdivision 1 of section 500, subdivision 2 of section 649, section 709, section 784, section 1358, section 1359, and subdivision 14 of section 3343, amending.

A. 930. Cattaraugus creek, to provide for the construction of fishways in.

A. 454. Penal Code, section 601, amending. (Receiving deposits in insolvent banks.)

A. 1048. Schenectady, canal bridge at Church street in, for construction of.

A. 851. Elections, primary, amending act to protect.

A. 788. Claims, Board of, claim of Thomas Benway, to hear.

A. 848. Evidence, Code of, to establish a.

A. I. 1244. Evidence, Code of, in relation to the publication of the.

A. 883. Kings county coroners, authorizing appointment of a stenographer for.

A. 870. Chautauqua lake outlet, making an appropriation for deepening.

A. 939. Brooklyn, escheat, releasing to Frederick Theiss.

S. 639. Civil Procedure, Code of, section 2717, amending. (Payment of creditors and legatees.)

S. 135. Societies or clubs, amending act for incorporation of.

S. 534. Brooklyn, streets and avenues in, relation to use of certain.

S. 625. Police matrons, amending act to provide for.

S. 675. Revised Statutes, subdivision 3, section 4, title 1, chapter 13, amending. (Property liable to taxation.)

S. 498. Criminal Procedure, Code of, section 459, amending. (Duties of stenographers.)

S. 724. Columbia county, tramps and vagrants in, to regulate commitment and discharge of.

S. I. 779. Mount Vernon, amending general act for incorporation of villages, relative to.

S. I. 805. Legislative Record, requiring printing and distribution of 500 copies of.

S. I. 826. State Treasurer's office, additional clerk hire in, making appropriation for.

S. I. 827. New York City Consolidation Act, subdivision 7 of section 305, amending. (Police Pension Fund.)

S. 691. Mortgage and Loan Companies, to regulate investment of money by.

S. 355. Legislative printing, amending act to provide for.

A. 986. Insane, regulating commitment, custody and discharge of.

S. I. 776. Military Code, amending generally.

1890. JANUARY 7. LEGISLATURE, ONE HUNDRED AND THIRTEENTH SESSION.

DAVID B. HILL, Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 7, 1890.

To THE LEGISLATURE.— You begin to-day a new period of law-making, confronted with responsibilities inherited from previous Legislatures and facing public questions well deserving your careful consideration and your intelligent disposition. Some of these I desire to present to your attention, bespeaking for them that faithful and impartial deliberation which a proper sense of official responsibility demands, and hoping that their discussion may have some influence in securing your wise action. I trust that they will all be approached in that spirit which seeks to render the best service to the people who have honored us with their confidence.

ENUMERATION AND APPORTIONMENT.

It will be the first duty of the Legislature to provide for an enumeration of the inhabitants of the State. This duty is first and paramount to all others, because it is an obligation imposed by the Constitution itself[a] and affects the sacred right of the people to a just and proper representation.

Within the hour which has just passed each member of your honorable body, in entering upon the duties of his office, has made a solemn vow that he will support the Constitution of the State of New York.[b] It is my pleasure to assume that in this instance, at least, the oath has not been taken without a full appreciation of its significance and responsibility. Yet in five successive Legislatures that vow has — apparently with deliberation and for mere partisan advantage — been ignored by a majority of the members.

The Legislature of 1885 refused to pass any measure providing for a simple enumeration of the inhabitants unless there should be coupled with it a provision for a census, while in the four succeeding years not a single effort of any kind has been made by the Legislature to discharge this constitutional duty.

I cannot believe that the present Legislature will be so faithless to its vows and so regardless of the people's rights. It can scarcely expect obedience for its own laws when, to perpetuate partisan control, its own members are false to that great law which is above all statutory enactments, because established by the people themselves — the State Constitution. The duty which the Legislature of 1885 and subsequent Legislatures failed to perform is no less incumbent upon the present law-making body. An enumeration is necessary, because, until it has been had, there can be no apportionment of the Senate and Assembly districts of the State. The interests of every growing section of the State demand that a new apportionment shall be made, and with each year's increasing population the Legislature's obligation to supply one becomes sterner and more imperative. The right of the people to a just and proper representation is too sacred to be neglected, evaded or juggled with. For five years an enumeration and an apportionment have been refused upon grounds that will not bear honest scrutiny; and the conclusion is inevitable that this attitude has been prompted by the fear that adherence to this constitutional requirement would lead to a permanent change in the political control of the Legislature. It is a shameful spectacle, indeed, which has thus been presented.

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[a] Const, 1846, art. 3, § 4.

[b] Const. 1846, art. 12, § 1.

It is no answer to assert that the Legislature has been willing to pass an enumeration bill, provided there is joined with it a provision for a census. The Constitution does not require a census. It does require an enumeration. It is true that the Legislature, with the concurrence of the Executive, has the power to authorize a census, and may in its discretion do so. It cannot do so without that concurrence. No constitutional requirement is violated whether the Legislature and Executive agree or disagree upon such a question. But if they do not agree upon the propriety of having a census, there still remains the obligation imposed by the Constitution to provide for a simple enumeration. That requirement stands alone and by itself.

But, aside from the violation of the Constitution involved in the attempt to withhold an enumeration unless a census be joined with it, there is neither sense nor reason in insisting upon a census at this time. The Federal Government directs the taking of an elaborate census every ten years, which furnishes in the way of statistical information all that would be included in a State census. Such a census is already in preparation. To duplicate it under State supervision would be an extravagant waste of public money. All that the State needs is a plain enumeration of its inhabitants, upon which to base an honest and just apportionment — not a conglomeration of statistics relating to its horses, sheep, cattle, goats, produce, farms, churches, buildings, industries and what-not. Such a census as is proposed would cost the taxpayers of the State more than $400,000, while the simple enumeration which is demanded would only cost about $80,000.

The continued refusal of the Legislature to provide for an enumeration and an apportionment will be an outrageous abuse of power to deprive certain counties of a fair representation in the law-making body. Let it not be forgotten that the present apportionment is based on an enumeration taken fifteen years ago. If the same ratio of increase in population has been maintained between 1880 and 1890 as existed from 1870 to 1880 — and there is no reason to believe otherwise — the total population of the State at present is upwards of 5,700,000, showing an increase of more than 1,000,000 over the population of 1875. The apportionment which was based on the population of 1875 was not a fair one, yet not only have all its inequalities and iniquities been intentionally perpetuated, but a million new residents of the State — almost a fifth of the population — have been denied that right sacredly guaranteed to them by the Constitution — the right of representation. Of this great increase in population since the present apportionment was established, 700,000 is in the cities of New York and Brooklyn, which pay more than half the State taxes. Surely here is "taxation without representation!" St. Lawrence county, with a population of not over 87,000, estimated upon the ratio of increase between 1870 and 1880, has three Members of Assembly, while New York, with a population sixteen times as great, has only eight times as many Assemblymen. Cattaraugus county, with probably not more than 67,000 inhabitants, is represented by two members, while Erie county, with four times as many inhabitants, is represented by only five members. The counties in which the cities of New York, Brooklyn, Troy, Albany, Syracuse, Rochester and Buffalo are situated comprise, by a safe estimate, fifty-three per cent. of the population of the State, yet their representation in the Assembly is only forty-two per cent. of the whole. Under a fair apportionment New York would be entitled to thirty-three Members of the Assembly, instead of twenty-four, and Brooklyn would have seventeen instead of twelve. The section of the State below the Harlem river would be represented by fourteen Senators instead of eleven, while the city of Buffalo and Monroe county would each have a Senator of its own.

Upon the growth and prosperity of its cities depend in a large degree the influence and importance of the State. To hamper and check their growth by denying them fair representation in the Legislature is political tyranny unworthy of patriotic men.[1]

ELECTORAL REFORM.

The attention of the Legislature is again urged to the desirability of some changes in the laws relating to our system of elections. Excellent as these laws now are, surpassing in the scope and exactness of their requirements the statutes of most other States, they have been found insufficient to protect the secrecy and purity of suffrage. We have election boards, equitably constituted, in which all parties are represented; our ballots are all required to be of white paper and of specified uniform type, caption and indorsement; no marks are permitted thereon to distinguish one ballot from another; each party is entitled to watchers and challengers; the provisions for a fair count are satisfactory and ample; the guarantees for securing prompt and accurate returns are adequate; tumults and disturbances around the polls are guarded against and are of rare occurrence; and every voter, not subjected to intimidation, has a perfect right and the fullest opportunity to cast an absolutely secret ballot if he so desires. Yet in spite of these excellent provisions our laws do not reach the two great evils which attend our elections — intimidation and corruption. These flourish unchecked, bringing shame upon our State, rendering our elections a mockery and threatening even the integrity and existence of our political institutions. It is, indeed, a sad allegation, which is made and not denied, that in some parts of our State at the recent Presidential election corruption was so unrestrained that the scenes at the polls resembled an auction more than an election; and that in other places intimidation was so prevalent and undisguised, particularly at some of our manufacturing centers, that employes were virtually driven to the polls and were actually instructed by their employers as to what tickets they should vote. No public service can be more patriotic than that which seeks to guard suffrage from such abuses.

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[1] As to an enumeration and apportionment, see 1885, note 18, *ante*, p. 43.

It is conceded by good citizens everywhere, I think, that all legislation intended to improve our election laws should have for its main purpose the correction of these two evils — corruption and intimidation. All other objects sought to be attained are of subordinate importance and should not be permitted to delay or prevent the accomplishment of this great reform. To the methods which are suggested the Legislature will do well to give careful consideration, adopting that which, free from constitutional and other proper objections, offers the simplest and most practicable remedy for the existing evils.

Many well-meaning citizens and political associations, impressed by the necessity for some remedial legislation, are just now urging the adoption of what is known as the Australian system of voting, and apparently believe that it will furnish a panacea for all the pernicious practices which now surround our elections. If this belief is well founded, there ought to be no prejudice against adopting the system merely because it has been successfully tried in foreign countries. It does not follow, however, that because the Australian system seems to be well adapted to the governments of Australia and England, and is superior to the systems which previously existed there, it can be appropriately applied to our institutions without its material modification. Those governments are founded upon the theory that the State should undertake to perform every service that it can perform, while the true theory of our institutions is that the State should do nothing that can better or as well be done by the free and untrammeled action of the individual citizen. To vest the greatest control and power of interference in the government is the object of their laws, while the intent of ours is to confer upon the people the largest liberty and the greatest personal privileges consistent with the public welfare. It should not be forgotten, also, that universal suffrage does not exist in Australia and Great Britain, but the election systems there are based upon a restricted suffrage. That this difference of conditions is recognized by the friends of the Australian system in this country is shown by the fact that the system, in its entirety, has not been adopted by any State in the Union. Several States, with Constitutions more friendly to it than our own, have enacted what is called the Australian system, but only after material and vital modifications. This adaptation by various States of different features of the system appears to have produced a confused impression in the public mind as to what the system really is. Before discussing, therefore, the advisability of its adoption in whole or in part by our own State, I desire to remind the Legislature of its distinguishing features. My own opinion is that many of these are admirable, while others are decidedly objectionable, constitutionally and otherwise. The principal provisions of the Australian law are as follows:

First. It requires that each election district shall be provided with a polling-booth, and that each polling-booth shall have separate compartments, which shall be so constructed as to screen any voter therein from observation, and shall be furnished with pencils for the use of voters. Each voter shall enter the polling-place alone and before voting shall retire alone to one of these compartments, and from there proceed, unattended by anyone, directly to where the ballot-box shall be and deliver his ballot, which he has prepared, to the presiding officer, who shall forthwith deposit it in the ballot-box, and the voter shall then quit the polling-booth. This requirement applies to *all* elections.

Second. It requires a registration in each district of all the electors who claim a right to vote therein, which registration or "list of voters" shall be produced at the polling-place on the day of election, and no elector can vote unless his name is found upon such list.

Third. It provides a method of nominating candidates, and requires that before any person can become a candidate at any election he must before nomination day be nominated by a limited number of electors, who are to sign a writing to that effect which is called a "nomination paper," and at the foot of which the consent of the candidate must be subscribed; and this paper is to be delivered to an officer called a "returning officer;" and if, upon the expiration of the time limited for nominations, it appears that there are no greater number of candidates duly nominated than are required to be elected, the returning officer shall declare such candidate or candidates to be duly elected, without having any election at all; but in case more such candidates shall have been duly nominated, then an election shall be ordered and held.

Fourth. All candidates are required to advance to the proper election officers certain sums of money, estimated and fixed by such officers, with which to pay for the ballots and meet the other expenses of the election. The ballots, while thus furnished nominally or ostensibly by the authorities at public expense, are, in fact, paid for by the various candidates from the funds so advanced by them.

Fifth. It provides for an *exclusively* official ballot, which is to be printed and furnished at the polls by the returning officer, and which is to contain the names of those candidates, and no others, who have been duly nominated in manner aforesaid. No other ballot can be voted. No elector can vote a ballot prepared by himself at his own home or elsewhere. He must vote the one officially supplied, or he cannot vote at all. No pasters are allowed to be used. No elector can write upon the ballot the name of any candidate. Electors must vote for some of the candidates who have been nominated, or not vote at all. The names of all the candidates for the various offices must be upon one ballot. If parties or candidates omit, through accident, inadvertence or any other reason, to present their nominations within the limited time allowed for that purpose, there is no remedy. The death or resignation of a candidate after the date limited for nominations has expired creates a vacancy which cannot be filled, and the opposing candidate takes the election by default. The returning officer primarily has the sole custody of all the ballots, and before they are delivered to the electors he is to write his initials on the face thereof; and one ballot is to be delivered to each elector, who, upon receiving the same, is to retire into the compartment before-mentioned, and there prepare his ballot by making a cross in the square opposite the name of the candidate for whom he intends to vote. Then, as described above, he is to hand his ballot to the presiding officer of the election. There is no provision for voting by illiterate or other persons who are unable to read the ballot, except in cases of blindness, when an agent of the blind elector may accompany and assist him.

The foregoing are the substantial features of the election system now existing in Australia. As before stated, it has not been adopted *in its entirety* anywhere in this country. In several States its principal provisions have been enacted, but not, however, without essential modifications. The system adopted in each State thus far seems to be distinct in itself, and each one differs in divers particulars from the others. It is respectfully suggested that, in framing a system for this State, unnecessary changes in our present election laws should be avoided as far as possible, and only those innovations made which are believed to be absolutely essential to accomplish the reform desired.

It should be borne in mind that the enactment at this time of a partisan election law is not possible, nor is it desirable. Every attempt to engraft provisions upon the proposed law in regard to which there is not a general concurrence of favorable sentiment should be avoided. It is evident that, whatever measure is finally secured at this session, it must be one which will meet the approval of the leading men of both parties. It is not a difficult task, when approached in the right spirit, to discover those features of the Australian system which it is desirable should be incorporated into our laws.

First. I recommend the adoption of the secret compartment system, whereby every voter shall be compelled to enter a private compartment for the purpose of examining or preparing his ballots, and from which he shall proceed directly to the ballot-box unattended by anyone.[2]

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[2] The electoral reform bill finally agreed upon and passed at this session became chapter 262, L. 1890. Governor Hill's suggestion as to separate compartments for the use of voters was adopted, section 23. The act applied to general, municipal, and local elections, but not to school district elections.

This is the essence and the particularly distinguishing feature of the Australian system. Its essential value is readily apparent. There can be no direct intimidation if the voter can select his ballot unobserved, and its contents are unknown except to himelf. There will be little or no bribery if the briber can not know to a reasonable certainty how the person bribed actually votes. It is wholly unlikely that the briber will accept the word of the voter as to what ticket the latter voted. There is little mutual confidence in such cases, and the absence of actual knowledge as to what ballots are really cast tends to prevent corruption. Of course, if the briber, without any personal knowledge on his part, is willing to accept the statement of the voter as to how the latter voted, then it will be impossible to prevent corruption under this system or under any other system that can be devised.

Incidentally, I suggest that the private booths or compartments should be specifically described by statute. Their construction should be regulated by explicit directions contained in the law itself. They should be uniform throughout the State, and in their construction very little discretion should be left to election officers. The law should be so plain, simple and explicit on this point that it can everywhere be accurately carried out.

One of the faults of both the "Linson" and "Saxton" bills of last winter was that neither of them sufficiently described or regulated the form, size, plan or manner of construction of the booths or compartments. The shelves or compartments provided for in the Massachusetts law proved defective. From a careful investigation of the operation of that law, which I recently instituted, I learn that the compartments were wholly open or not inclosed in front, and that the sides were so low that voters easily conversed with each other over them, and were not of sufficient length to prevent voters at adjoining shelves exchanging tickets thereunder. Under the Kentucky law the compartments resemble a sentry-box, and the voter enters and closes the door.

It is desirable that the compartment should have four sides inclosed — one side to open and shut as a door — and that those sides should be of sufficient dimensions to prevent all communication between the adjoining compartments. Thus absolute secrecy and privacy may be secured. A door in front, swinging each way, at least seven feet high and extending within a foot of the floor would make a proper means of ingress and egress. The voter should be absolutely screened from observation, and the interior of the compartment itself should be exposed only a foot or so near the floor, sufficiently to enable one to see at all times whether the compartment is occupied.

Whatever differences of opinion may exist as to other features of the proposed law, there ought not to be any question as to the propriety of the adoption of the secret compartment plan as herein outlined. It can be successfully operated no matter what kind of ballots are used, whether official or unofficial, or both. This has been demonstrated in Wisconsin and in Connecticut.

The proposition for a secret compartment is an independent one and can stand alone. It effectively reaches the two great evils of bribery and intimidation, against which it is specially aimed, and does not assume to remedy any minor abuses which may exist. I believe that the adoption of this single feature would secure the chief benefits of true electoral reform, and it will be a public misfortune if the Legislature shall insist upon coupling with it provisions of doubtful propriety or constitutionality.

There may properly accompany the enactment of the secret compartment plan suitable provisions forbidding any electioneering within any polling-place or within 100 feet or other reasonable distance therefrom; prohibiting any elector from showing the contents of his ballot at the polling-place, or placing any mark thereon by which it may be afterwards identified as the one voted by him; requiring that no person shall remove any ballot from any polling-place before the closing of the polls; and making a violation of these provisions a misdemeanor. Any other regulations or restrictions having sincerely for their purpose the facilitating of honest elections, by which compulsory secrecy of voting may be better secured, and which do not unnecessarily infringe upon the rights of electors, may very properly be added to the foregoing requirements.

Second. Whatever system is adopted should be applied to all elections — general, municipal and local.[c]

This is so in Australia, in England, and in most of the States which have adopted the new system. There is no propriety in having two distinct systems in force at the same time — with which the people must familiarize themselves — one applicable to general elections and the other applicable to a portion of the municipal and local elections. Bribery and intimidation are not confined to any locality; they are supposed to exist to some extent everywhere in the State — in the country as well as in the cities — and are associated with local as well as State elections. If they can be suppressed or mitigated by a wise statute, that statute should be applicable to wherever they exist. These propositions are so self-evident that any enactment which contains such discriminations must necessarily be regarded as defective.

The "Saxton" bill of last year, and that also of 1888, were each open to the charge of lacking uniformity in their operation, because by their express terms they did not apply to municipal or local elections in towns or villages having less than 7,000 population. The advocates of the measure refused to obviate this objection, but strenuously insisted upon this discrimination for reasons which have never been satisfactorily explained.

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[c] See note 2.

Third. A general registration of electors throughout the whole State should accompany the secret compartment system of voting.[3]

It ought not to require any argument to demonstrate the propriety of this course. Such registration is required in Australia; it is required in Great Britain. Every State in this country which has adopted any portion of the Australian system has also provided that a registration of electors shall accompany it. In fact, it is an indispensable part of the machinery for absolutely securing compulsory secrecy in voting. The ballot clerks must necessarily be some distance from where the ballot-boxes and the inspectors are, and if every person who presents himself to the ballot clerks to receive ballots must be given them without question, or else the proceedings be stopped to investigate his right to exercise the suffrage, then fraud, confusion and delays are likely to occur. The same inquiry might have to be repeated when the person offers his vote to the inspectors. The absence of registration would complicate and endanger the success of the proposed system of voting. The "Saxton" bill of last year recognized that difficulty so far, at least, as elections for town and village officers are concerned, because it declared that the act "should not apply to such elections in towns and villages where there is no provision by law for the registration of voters."

But, aside from this consideration, such registration is demanded in the interest of honest elections. In framing a comprehensive remedial statute our efforts to correct existing abuses should not be confined to ballot reform alone, but should include whatever important changes are desirable in our entire electoral system to purify elections. Electoral reform presents a more comprehensive, broader and higher object than mere ballot reform. Annual personal registration is now required in the two great cities of New York and Brooklyn. This is not proposed to be disturbed or extended. In the other cities of the State and in villages having over 7,000 population (also in a few towns covered by special statutes), a registration is required or allowed, but not always a personal registration, and when the name of the elector is once placed on the list it continues thereon until he dies, removes, or fails to vote, the list being revised and corrected each year by the inspectors. No registration whatever is now required or allowed (save in a very few instances above referred to), in any towns or villages containing less than 7,000 population, a class which includes most of the towns and villages throughout the State. There is much illegal voting in these sections in every hotly-contested election, especially in presidential elections, and in counties adjoining other States, sufficient, it is believed, to control the result in the State in many instances.

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[3] A general registration act, chapter 321, was passed at this session, but it was not to apply to New York and Brooklyn.

It is often urged that no registration is necessary in the country districts, because the voters are all known to each other. This is only partially true, however. Some of the election districts are very large in population as well as in territory, and personal acquaintance with many electors is practically impossible. The universal testimony is that, especially in presidential elections, scores of voters turn up in these towns whom nobody knows, and whose identity it is difficult to ascertain. They arrive on horseback or in wagons, vote quickly and disappear. There is no opportunity at the time definitely to determine their residence and there are no facilities at hand for detaining them so that the suspicions which their actions have aroused may be investigated. A registration would remedy all this, and no tenable objection can be urged against it, save that it would cause a trifling and occasional inconvenience, which it is the duty of the elector to undergo for the public good in the promotion of honest elections.

In the State of Massachusetts a registration is required everywhere — in the country as well as in the city districts. The provisions of existing registration laws applicable to our interior cities should be extended to all the towns and villages of our State.

While the desirability of a general registration everywhere is practically conceded by an almost unanimous public sentiment, yet it is urged in some quarters, as an excuse for the refusal to incorporate it in a bill relating to a secret ballot, that it may more appropriately be included in a separate enactment. This objection is entirely without force. In framing a ballot act it is important to know, in advance, whether or not a general registration is contemplated, as its provisions must be varied accordingly. Legislators or others, doubtful of the propriety of the proposed ballot act, might conclude to favor it, if a registration should be included in it, and are, therefore, fairly entitled to know the whole scheme in order to determine their action. Besides, there is no valid reason presented why a provision for registration should not be included. Those who object to it may be unaware of the fact that the much-praised Australian ballot act itself contains elaborate provisions for a general registration of voters. (See part 1 of the Australian Electoral Act of 1879, sections 5 to 45.) This is an excellent precedent, which may be safely followed.

Fourth. I recommend that provision be made for both official and unofficial ballots.[4]

Grave objections exist to an exclusively official ballot. Secrecy of voting can be compelled just as well without it, and no sufficient reason exists why it should be insisted upon. There is, however, no objection to candidates being nominated by petition as well as by party conventions;

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[4] The election law of 1890, chapter 262, provided for uniform ballots to be printed at public expense, and also for unofficial ballots, including a ballot which each voter was authorized to select or prepare for himself.

neither is there serious objection to having ballots printed at public expense — to be called "official ballots" — and duly furnished to the electors at the polling-places, thereby always insuring an abundance of ballots and enabling any person to become a candidate without expense to himself, so far as the cost of ballots is concerned; but unofficial ballots should be permitted also.

The only two arguments worthy of notice in favor of an exclusively official ballot are these: First, to prevent a failure of ballots, it being claimed that candidates or workers sometimes destroy or suppress the party ballots. Second, to remove the pretense or necessity of any assessments upon candidates for the expense of printing ballots, and of employment of workers to distribute them.

These objects can be as well accomplished by official ballots, which are not exclusive, as they can by exclusively official ballots.

It is clear that the furnishing of official ballots at public expense will not relieve parties or candidates from much expense, because nearly every bill that has been proposed, embracing the official ballot, including the "Saxton" bill of last winter, expressly provides that the elector may bring into the polling-place an unofficial sample ballot, for the purpose of aiding him in the preparation of his official ballot. If the propriety of this provision is conceded, the question arises, who is to pay for the printing of these sample ballots which the electors are permitted to use? Of course, they must be provided by parties and candidates, and thus the principal argument for an official ballot, namely, the saving of expense, falls to the ground, as it would cost as much for unofficial sample ballots as it costs at present for the printing of ballots. Besides, if electors are to be permitted to bring with them to the polls, and take into the booths, sample ballots, and candidates are permitted to pay the expense thereof, there seems to be no good reason why unofficial ballots may not be voted, and thus all this circumlocution avoided.

Right here it may be added, that in the recent elections in Massachusetts under the new ballot law of that State, which permits electors to carry sample official ballots into the booth for use in preparing their official ballots, there were more ballots printed, official and sample, than were ever printed under the old law. The number printed for distribution by the State was about 700,000, but at least as many again were printed upon the orders of political committees, individual candidates and the Ballot Act League. The printing establishment which furnished the official ballots also furnished 400,000 sample ballots for candidates and committees, while the Ballot Act League alone distributed 250,000 additional sample ballots. I am told that among experienced and capable observers of the working of the new law in Massachusetts the impression is general that the law will not obviate the expenditure of money by committees and candidates for purposes of printing, but that more money will be expended than under the old system.

That portion of the Australian system which requires candidates, as a condition of their candidacy, to deposit certain sums of money with which to pay for ballots and other expenses of elections, seems to be regarded as objectionable in this country, and is rejected by common consent, and need not, therefore, be further considered.

Those other provisions of the same system which provide that if only one candidate is nominated for an office within the required time, the one so nominated must be declared elected without having any election whatever; and the further provision that the election officers are to place their initials on the backs of the ballots when they are delivered to the voters, thus virtually substituting a mere promise of secrecy in the place of secrecy itself, must also be rejected — the first as incompatible with our institutions, and the second as an unnecessary and clearly unconstitutional invasion of the rights of citizens. If only official ballots are proposed to be used, it follows that nominations must cease some time before an election — at least eight or fifteen days — and, although a candidate may resign or die within that period, his name must still be printed on the ballots. In that event, under the Australian system proper, the other candidate, if he receives any votes at all, is elected, as there is no provision for voting by pasters or writing, the true theory of that system being that electors must vote for one of the candidates nominated, or not vote at all. It may be assumed that this portion of the Australian system will also have to be repudiated, and voting by pasters or writing permitted; but still there remains the difficulty that candidates cannot be nominated after the specified time and that only by pasting or writing their names on the ballot can they be voted for at all.

Any system is objectionable which prevents parties or individual electors from nominating candidates at any period before election and voting for them by a printed ballot up to the very closing of the polls; and this objection is inherent to an exclusively official ballot and cannot be cured. If official ballots alone are permitted to be used, it is apparent that the placing of the sole custody thereof in the hands of the respective county clerks of the various counties, and in the city of New York in the hands of the Clerk of the Bureau of Elections, is vesting a dangerous power in such officers, and one which is liable to abuse. These officers are, of course, partisans, and over two-thirds of them belong to the same political party. It may be safely asserted that the officers belonging to one party ought never to be charged with the exclusive responsibility of printing and distributing ballots for their political opponents. The crime, fraud, negligence, or mere inadvertence of a single officer might prevent an election in a whole county or in the great city of New York, and a State or presidential election might be determined thereby.

The objection is not that these results are likely to occur, but that they are rendered possible. No one officer should be vested with such vast power.

In order to mitigate this objection the provision has been proposed that *fac-simile* unofficial ballots may be used in case the official ballots are not furnished, or the supply becomes exhausted; but then the query arises, when and how are these *fac-simile* ballots to be furnished? It is clear that, in order to provide for the contingencies mentioned, they would have to be procured in advance and at the expense of the candidates, and thus again one of the principal arguments in favor of official ballots, to wit, the saving of expense to candidates, and preventing assessments upon them for printing, falls to the ground and becomes wholly untenable, as the expense would be greater under the requirements of the proposed system than at present.

There are, however, three constitutional objections to an exclusively official ballot, such as was provided for in the perfected "Saxton" bill of last year.

First. The right to vote cannot be made dependent upon nominations being made and certificates thereof duly executed and filed.

The right of voting is not conferred by statute. It is given by the Constitution itself in article 2, section 1, wherein it is declared that every male citizen, twenty-one years of age and possessing certain requisite qualifications of residence, "shall be entitled to vote * * * for all officers that now are or hereafter may be elective by the people."

The Legislature cannot restrict the right of suffrage thus established. It cannot restrict it directly or indirectly. It cannot make the right of an elector to vote dependent on the action or non-action of those upon whom the law imposes no duty. It is conceded that if no nominations are made in a certain district, or if made are not duly certified within the required time, then, according to the provisions of this system, the elector cannot vote. Unless there are nominations made no official ballots can be printed and no others can be voted.

The Legislature has no power to take away from an elector his right of suffrage because politicians see fit in certain districts to abstain from signing and filing certifications of nomination.

Second. It is unconstitutional to require an elector to vote for the candidate of his choice by making upon the exclusively official ballot a cross (thus, ×), opposite the name of such candidate, and prohibiting him from voting in any other manner.[5]

This provision concededly disfranchises one entire class of electors, to wit, those who are unable to read and write. It establishes an educational qualification not authorized by the Constitution.[d] According to the proposed system, every elector who votes must receive his ballots at the polling-place from the official ballot clerk, and then retire to one of the booths and mark the names of those for whom he desires to vote. If the elector cannot read the names on the ballots, he cannot so mark them. Hence he cannot vote.

The Legislature has no right in framing a statute to consider the question whether the doctrine of manhood suffrage, which has been so long established in our organic law, is wise or unwise. It is sufficient that the Constitution makes no distinction between the educated and the uneducated, the poor and the rich, the native and the naturalized citizen, the elector who can speak and write our language and one who cannot, but its generous provisions guarantee the right of suffrage to "every male citizen of the age of twenty-one years" who has resided the requisite time in the State, in the county and in the election district in which he offers to vote. The Legislature cannot add to these qualifications.*

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[5] The election act of 1890, chapter 262, authorized a voter who was physically unable to mark his ballot to select a person to accompany him into the voting booth for the purpose of assisting him in preparing his ballot.

[d] Const. 1846, art. 2, § 1.

The Massachusetts Ballot Act is not open to this objection, because in that State the Constitution itself requires every elector to be able to read and write the English language. It is unnecessary to argue this point. The bare statement of it is sufficient to show that it is unanswerable.

The Court of Appeals of Kentucky, in the case of *Rogers v. Jacob, Mayor, et al.*,[e] has recently decided that just such a provision was in violation of the Constitution of that State.

It is clear that a statute cannot annex an educational or other qualification not explicitly provided for in the Constitution, either by declaring it in express terms or by prescribing tests which the elector cannot meet by reason of his being illiterate.

Third. It is unconstitutional to require an elector to vote an exclusively official ballot containing the names of *all* the candidates nominated.

The Constitution of 1821, as well as section 5 of article 2 of the Constitution of 1846, which is now in force, each contained the following provision:

"All elections by the citizens shall be *by ballot*, except for such town officers as may by law be directed to be otherwise chosen."

The very word "ballot" implies secrecy, according to all judicial decisions.

At the time of the adoption of each of these Constitutions there was but one meaning which, by common usage, could be given to the term "ballot." It was that which the Legislature had incorporated in a statutory enactment. Section 8, article 2, title 4, chapter 6, part 1, of the Revised Statutes, defines the word "ballot" as follows:

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* See Green v. Shumway (1868), 39 N. Y. 418.

[e] 88 Kentucky Rep. 502.

"The ballot shall be a paper ticket, which shall contain written or printed, or partly written and partly printed, *the names of the persons for whom the elector intends to vote,* and shall designate the office to which each person so named is intended by him to be chosen."

The language of the Constitution, "all elections shall be by ballot," referred to the kind of ballot then in use, the definition of which was contained in the Revised Statutes.*

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* The first Constitution, 1777, article 6, authorized the Legislature, after the close of the war with Great Britain, to try the experiment of voting by ballot instead of *viva voce*, which was the existing practice. The act of March 27, 1778, to regulate elections, authorized electors to vote by ballot for Governor and Lieutenant-Governor, and the statute described the ballot as "a paper ticket" containing the names of the candidates "severally wrote thereon, which said paper ticket so folded, rolled up, tied, or otherwise closed, as to conceal the writing shall be disposed of" by delivering it to one of the inspectors in the presence of the others, and the ballot, without being opened or inspected, was to be put into a locked box prepared for that purpose. By the same article of the Constitution, elections of Senators and Members of Assembly were required to be *viva voce* during the continuance of the war and until other provision should be made by the Legislature. This was the earliest statute on the subject of voting by ballot.

The election law passed February 13, 1787, extended the plan of voting by ballot by including members of the Legislature. The new act adopted the description of the ballot already quoted from the act of 1778. Chapter 61 of the Revised Laws of 1801, continued this election system, and described the ballot as a "paper ticket," "so folded or closed as to conceal the writing thereon." The Revised Laws of 1813, volume 2, page 250, varied the description contained in the act of 1801, by requiring the ballot to be "so folded or closed as to conceal the contents thereof."

This statutory regulation concerning the use and description of the ballot, which was authorized but not required by the first Constitution, was in force at the time of the adoption of the Constitution of 1821, which contained a provision, article 2, section 4, that "all elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen." Then came the election law of 1822, chapter 250, passed April 17, which continued the description of the ballot contained in the Revised Laws of 1813. The portion of the Revised Statutes passed in

The constitutional provision, according to all sound principles of construction, must be deemed to have embraced exactly this definition, the same as if it had contained the very language of the Revised Statutes above cited. The Constitution, in effect, says: The "ballot" shall contain "the names of the persons for whom the elector intends to vote." By necessary implication the Constitution says that the ballots shall contain no other names.

It is not intended to argue this proposition, but simply to state it. I do not believe that the Legislature has the power to direct that the ballot must contain the names of all the candidates for whom the elector does *not* desire to vote. The constitutional right to vote a ballot containing the names and *only* the names of those for whom the elector desires to vote, has existed in this State for over sixty years. It is submitted that electors cannot be divested of that right by a mere statute.

The foregoing constitutional points are taken from the briefs of several able jurists which have been submitted to

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December, 1827, taking effect January 1, 1828, including the election law. Part 1, chapter 6, title 4, article 2, section 12, described the ballot as "a paper ticket which shall contain, written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote," and by section 11 the elector was required to "deliver his ballot, so folded as to conceal the contents, to one of the inspectors, in the presence of the board." This was substantially the provision on this subject contained in the original act of 1778.

The election law of 1842, chapter 130, which repealed the provisions of the Revised Statutes on the same subject, continued without change the regulations relative to the description and use of the ballot, the sections on this subject being numbered 7 and 8 of title 4, article 2, instead of 11 and 12 as in the original. Governor Hill's quotation is apparently from the act of 1842, which was incorporated in subsequent editions of the Revised Statutes in place of the portions repealed.

It will be seen from the foregoing sketch that when the use of the ballot at elections was prescribed by the second Constitution, which took effect on the last day of December, 1822, the secret ballot had already been in use forty-four years, and had become the established method of voting. The third Constitution, 1846, article 2, section 5, reaffirmed the rule which had long been a part of the election system of the State.

me, and inasmuch as they coincide entirely with my own convictions, I have taken the liberty of adopting nearly their exact language in presenting the same to the Legislature.

An exclusively official ballot, whether desirable or vicious, may, of course, be secured by an amendment of the Constitution, but until that has been accomplished it is submitted that it cannot be adopted in this State.

These constitutional and other objections before mentioned can all be obviated by eliminating from any proposed measure those provisions which provide for an exclusively official ballot and substituting in their stead provisions for both official and unofficial ballots.

There is no sort of difficulty in framing a satisfactory measure under which both kinds of ballots can be used, so that the whole system can work harmoniously together. It should be provided that the ballots should be printed in the same form as at present, except that the width and length thereof should be prescribed; that nominations may be made by parties and individuals, and that the names of the candidates so nominated and certified within a reasonable time before an election shall be printed upon ballots at public expense — to be known as "official ballots" — and furnished at the polling places, each set of nominations to be printed separately, and a set of such ballots shall be delivered by the ballot clerks to each elector upon his entering the polling-place, who shall receive the same and enter the private compartment, provided for that purpose, to assort and prepare his ballots, and after preparing the same he shall proceed unattended directly to the ballot-box and deliver his ballots so prepared to the election officer, and then depart. And it should be further provided that parties and individuals may also provide their own ballots — to be called "unofficial ballots" — containing the names of candidates who may have been nominated, as aforesaid, by petition or otherwise, or nominated at any time or not nominated at all, and electors may bring the same with them, and upon entering the polling-place the electors so bringing their ballots with them shall, nevertheless, be handed by the ballot clerks a full set of the official ballots aforesaid, which they shall receive, and shall then enter the said private compartment and from there proceed directly to the ballot-box and deliver to the proper officers whatever ballots they may have therein prepared or which they brought with them and which they desire to vote. It should be further provided that each elector should remain in the booth at least one minute and not over five minutes, and that upon departing from the private compartment he shall leave therein all the ballots except those he proposes to vote, and his intentional failure so to do should be declared a misdemeanor.[6]

As an additional precaution for securing greater secrecy, it has been suggested that suitable envelopes might be provided at public expense and placed in the custody of the ballot clerks, whose duty it should be to deliver one with each set of official ballots to the electors as they enter the polling-place; and that such electors shall place the ballots which they have prepared, official or unofficial, in this envelope, seal it and hand the same to the election officer, as hereinbefore described. The official and unofficial ballots being exactly alike in size, form and indorsement, as outlined above, the necessity for such envelopes is not absolute; but there is no possible objection to it, and as an additional safeguard for secrecy it may be advisable to adopt it.

It will be observed that an official ballot, without being exclusive, fulfills all the purposes for which an exclusively official ballot was first proposed, and it is difficult to discover a valid reason why, when an official ballot is permitted, there should still be interposed objections to unofficial ones. The privilege of an unofficial ballot, which an elector can prepare at his own household with the assistance of his family or friends, if necessary, and which he can take with him to the polls in his "vest pocket" or otherwise, is a right which I firmly believe the electors of the State do not desire to surrender. It is a right especially dear to old men, to independent voters, to naturalized citizens who read, speak and write the English language very imperfectly, to poor men or others who are so unfortunate as to be illiterate, but who do not desire to expose their illiteracy to others than their own families, and to many other electors who desire more than a few brief moments in which to prepare their ballots. The existence of an unofficial ballot does not affect the question of secrecy one way or the other. It has been urged in some quarters that a briber can give an elector an unofficial ballot, and then the elector, after voting, can bring away with him his official ballot as evidence that he voted the ballot which the briber gave him. The clear answer to that is, first, that the briber has, after all, only the word of the elector as to how he voted, as the ballots here proposed would all be alike in form — the official and the unofficial as well — and the mere fact that the elector returned with a set of tickets, not voted, would prove nothing, as he could easily obtain any number of sets of tickets, and the briber would have no means of knowing where, when or how he obtained them, or how he, in fact, voted; and, second, the measure as here outlined contains a provision forbidding the bringing away from the polls of any ballots after voting. The suggestion of this argument against the unofficial ballot looks like straining a point upon which to base an objection when one does not, in fact, exist.

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[6] The Governor's suggestions were for the most part embodied in various detailed provisions contained in the election law, chapter 262, relating to the conduct of voters, and the method of carrying on the election.

The system of both official and unofficial ballots would operate without any friction, and would preserve the present form of ballot to which the people are accustomed. There is nothing of substantial benefit to be accomplished by a bare change of form, and it is electoral reform rather than mere ballot reform which is imperatively demanded.

This thought leads to the suggestion that there are other desirable provisions which ought to accompany any complete and comprehensive measure on this subject, as numerous statutes upon kindred topics should be avoided, and one enactment should embrace all the important legislation which is desirable upon the subject-matter.

(1.) The Massachusetts statute entitled "An act to facilitate voting by employes" should be included. It provides, in substance, that all employes in manufacturing, mechanical or mercantile establishments shall be entitled to a period of two hours on election day in which to vote at any general election.[7]

(2.) That species of intimidation frequently resorted to before important elections by the use of political "pay envelopes" in which to pay employes their wages, should be specifically prohibited and heavy penalties imposed for a violation.[8]

(3.) Each candidate and the executive committee of each political party should be required to publish an itemized, verified statement of all the moneys expended by them in each campaign, and the particular purposes of such expenditures. I recommended this in my Annual Message of one year ago, and I reiterate it now.[9]

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[7] This suggestion as to the time to be allotted to employes was adopted, and included in the election law of 1890, chapter 262, section 36.

[8] The suggestion as to pay envelopes was embodied in chapter 94, passed April 4, adding section 41c to the Penal Code, prohibiting the use of pay envelopes containing any political indorsement or suggestion.

[9] Chapter 94, amended the Penal Code by including a provision, section 41d, requiring candidates to file a statement of their election expenses. The Governor's suggestion as to similar statements by political committees was embodied in an act, chapter 502, passed in 1906. See also the amendatory act of 1907, chapter 596.

(4.) Legal facilities should be afforded whereby a successful candidate who can be shown to have obtained votes by bribery on the part of himself, his agent or his political committees, may be ousted from office by the defeated candidate, and the latter given the office in his stead, provided it appears that neither the defeated candidate nor his committees have used any corrupt means to promote his election. This would encourage prosecutions, and put a premium upon honest candidacy.

The two last provisions (3 and 4), above recommended, are taken from the "Corrupt Practices Act" of Great Britain, which has accomplished more for the purification of elections in England than any other reform that has ever been tried. It is the universal testimony there that these two provisions have rendered large expenditures on the part of wealthy candidates extremely dangerous and unprofitable.

(5.) It should be provided that election districts should not contain over three hundred voters, and means should be afforded for enforcing such a provision. The necessity for small election districts becomes imperative under the proposed secret compartment plan of voting.[10]

It is to be hoped that the Legislature will enter upon the preparation of a proper measure actuated by the sole purpose of accomplishing something practical for the good of the State, uncontrolled by partisan considerations and uninfluenced by unintelligent clamor. The cause of true reform is not promoted by loud declamation or by unseemly protestations of attachment on the part of its professed friends. Over-zealousness becomes suspicious in such cases, and invites the conclusion that partisan advantage or cheap reputation is the object sought, rather than sincere anxiety for the public weal. There is, unfortunately, more or less selfishness, intolerance, fanaticism, ignorance and hypocrisy which attach themselves to every reform movement, and electoral reform has not been without barnacles of these kinds. Conspicuous among such apparent advocates, but real obstructionists, are men who have no sympathy with universal suffrage, and who would restrict it if they could; doctrinaires who, though never having passed a day at the polls, believe themselves capable of framing a law which will correct all abuses, and who obstinately refuse to accept suggestions from men of practical experience; and demagogues, who, having felt the popular pulse, seek the public ear at every opportunity, and, parrot-like, repeat the cry for "ballot reform," with no appreciation of the difficulties involved in its solution, ignorant of the details of any measure proposed, unable or unwilling to comprehend the constitutional objections encountered, and ready to impute unpatriotic and base motives to thoughtful and cautious men, who decline to acknowledge the wisdom of every innovation suggested under the alluring name of reform. It is unfortunate that so praiseworthy a cause should be injured by such questionable and ostentatious championship. It will be unfortunate if influences which spring from these narrow and bigoted sources shall prevent the Legislature and the Executive from agreeing upon a proper law for the correction of the great evils which now exist.

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[10] An election district was limited to 300 voters by the election law of 1890, chapter 262, section 23.

THE PROHIBITION AMENDMENT.

Two years ago there was proposed in the Legislature an amendment to the Constitution known as the prohibition amendment, which was agreed to by a majority of the members of each House. That amendment was as follows:

ARTICLE —.

SECTION 1. No person shall manufacture for sale, or sell or keep for sale as a beverage, any intoxicating liquors.

whether brewed, fermented or distilled. The Legislature shall by law prescribe regulations for the enforcement of this article, and shall provide suitable penalties for its violation.

Under the express provisions of the Constitution relating to amendments (Article 13, sec. 1) this amendment is "referred" to the present Legislature for action thereon. The propriety of its approval for the second time is one of the questions which must necessarily engross your attention.

I do not believe that the people of the State favor the adoption of this amendment. Their sentiments upon this question have been tested and expressed too frequently to leave much doubt as to their position. They are opposed to prohibition, but believe in the regulation of the liquor traffic by just and equitable excise laws, rigidly enforced. Observation and experience have demonstrated to them, unless I am mistaken, that constitutional prohibition is not the best means of preventing or mitigating the evils of intemperance. That this view is shared by public sentiment elsewhere is evidenced in the result of recent elections in the States of Massachusetts, Rhode Island, Pennsylvania and Connecticut, in which the question of prohibition was directly or indirectly involved.

It may properly be suggested that this amendment ought not to be passed by the present Legislature unless its members conscientiously believe in the principle of prohibition. It ought not to be passed merely "for form's sake" nor in obedience to a desire to shirk responsibility for its defeat.

The Constitution contemplates that a constitutional amendment shall meet the honest and deliberate judgment and approval of two separate Legislatures before any further action shall be taken thereon. It has often been asserted in recent years that the passage of an amendment by the Legislature is more a matter of form than substance, and that the object thereof is simply to allow the question to be afterward submitted to the people. In behalf of this position it is urged that the Legislature may, with propriety, adopt such a course, irrespective of the fact that its members themselves neither sincerely favor the policy of prohibition nor believe that the same is desired by the people of the State.

It is respectfully submitted that this is a perverted and dangerous conception of public duty, and an ill-disguised plea by which to endeavor to escape official responsibility. Merely because the action of the Legislature is not the final act which vitalizes an amendment is no valid reason why it should be passed irrespective of its real merits, simply to enable it to be submitted to the people. As well might it be claimed that a member has a moral right to vote for a pernicious bill, and urge as his excuse that his vote does not make it a law, but that he voted for it in order to "submit" it to the Governor, whose approval alone gives it vitality. The same reasoning would justify a Legislature in passing an amendment legalizing polygamy, or in passing any other constitutional amendment, no matter how undesirable or obnoxious it might be. No conscientious legislator can thus throw off his own official responsibility.

The true theory is that each Legislature acts for itself and passes upon an amendment according to its own convictions; and its action, whatever this may be, is final so far as itself is concerned. The Legislature and the people are expected to act, and should act, independently of each other. What the people in their wisdom may see fit to do with an amendment after it has duly met the approval of two distinct Legislatures is another matter, and one with which the Legislatures which passed it have nothing to do.

It follows from these observations that if a majority of the members of the present Legislature honestly and sincerely believe in constitutional prohibition, then they have a moral right to vote for it, but otherwise not. They have no right to adopt it merely in order to secure an opportunity to defeat it at the polls. Such a course is not only unjustifiable, but it is trifling with an important subject.

Prohibition is one thing, and the proper regulation of the liquor traffic by reasonable excise laws is another; and they are inconsistent and irreconcilable. Both together are neither possible nor necessary, and the effort to secure the former only retards and embarrasses the latter.

What the people of the State want is not fickle, inconsistent and variable action at each session of the Legislature, but adherence to a wise, just and settled policy in relation to the temperance question.[11]

THE IMPROVEMENT OF COUNTRY ROADS.

The subject of the improvement of country roads is one which is attracting wide-spread attention. The fact exists that our highways in the rural districts are, as a general rule, in an unsatisfactory condition, many of them being almost impassable without great discomfort during large portions of the year, while few are kept in a proper state of repair. They are far inferior to those throughout England and several other countries in Europe, while the public roads in the New England States are conspicuously better than ours.

This situation may have arisen because of our vast expanse of territory, the effort to maintain too many highways, the large expense involved in their proper care, inattention and indifference on the part of the people, or possibly from a defective system of highway laws. Whatever may be the real cause, it cannot be denied that our highways are deteriorating, and that some adequate remedy should be devised. It is apparent that they are not constructed with any special skill, little or no engineering talent being employed, and the matter of culverts and drainage being largely overlooked. It is asserted by some that the present system of permitting each freeholder to "work out" his road taxes operates badly, and being a relic of old times, might be essentially modified with beneficial results. There seems to be a lack of official responsibility and competent supervision. Neither commissioners of highways nor pathmasters are always selected for their especial fitness for the discharge of the important duties involved in the proper construction of suitable highways or in their care and maintenance. In some of the western States these duties devolve upon a county civil engineer, who has entire charge, and whose functions are performed for the benefit of the whole county, freed from local influences and interests.

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[11] The prohibition amendment adopted by the Legislature of 1888 was again adopted by the Legislature of 1890. In connection with the amendment adopted by the Legislature in 1890, another resolution was adopted directing that the amendment be submitted to the people at a special election to be held on the second Tuesday of April, 1891, but the amendment was never submitted. See Governor Hill's observations on this subject in his annual message of 1891, *post*, p. 1060.

When highways are once properly built, the inexpensiveness of their proper maintenance is not generally understood; but the principal difficulty in the past has arisen from their originally defective construction. Country highways running through a town should not be regarded as principally for the benefit of that town. That may be their primary object, but they serve a broader and more comprehensive purpose in affording means of communication for all the people, and should be viewed as a part of a great general system. The burdens imposed upon the taxpayers in the country are conceded to be onerous and various, and it cannot be reasonably expected that they will manifest an unusual interest or a large degree of pride in the maintenance of superb and expensive highways to an extent beyond the actual needs of the immediate neighborhood.

But the required improvement of our highways should not be considered in any narrow or selfish spirit, nor should local interests alone be consulted. The interests of the whole State are involved. This aspect of the question naturally presents the inquiry whether the State itself should not take the lead in the matter of so pressing and desirable an improvement.

It has been suggested that the State should proceed to construct through every county two highways, running in different directions and intersecting each other in about the center of the county — such roads to form a part of a complete general system, those in each county to connect with those of adjoining counties, and to be known everywhere as State roads, constructed, cared for and maintained at the expense of the State at large, under the direction and supervision of the State Engineer and Surveyor or other competent authority to be designated. This system, when once completed, would enable a person to start from New York city, Albany or any other point, on foot or in carriage, and visit every county in the State without once leaving the State roads, thus insuring comfort, convenience, pleasure and speed. These roads should be macadamized or constructed of crushed stone or other suitable material, with proper culverts, good bridges, adequate drainage, watering troughs and sign-boards, so as to compare favorably with the best country roads in other countries; and existing highways could be utilized for this purpose so far as feasible.

These State roads would not only prove of great convenience and vast advantage to the whole community, but they would serve as " object lessons " to the local authorities, the effect of which would necessarily tend to improve the ordinary town highways and prove of inestimable benefit.

It is not believed that the people of the cities of the State would object to this improvement, but that, on the contrary, they would hail it with pleasure, as during the summer months they flock to the country in large numbers and are deeply interested in all that concerns the material progress, development and prosperity of the rural districts.

In the early history of the State it was the custom to construct important public highways at general expense. The Session Laws from 1812 to 1831 contain many acts making liberal appropriations for such purposes; but after the building of our canals and railroads the practice was discontinued.

Our free canals are maintained at an expense of over a million dollars annually, and the State at various periods in its history has financially aided the construction of certain railroads. Some interior counties have been heard to complain, possibly not without some reason, that those improvements have not materially benefited their particular localities, but the plan here outlined would to some extent lighten the burdens to which they are now subjected, or at least tend to equalize them.

It is realized that the project here suggested would require many years to fully carry out, and the outlay of a vast sum of money; but the State is practically out of debt, and it is believed that there are no constitutional objections to be overcome, and before any debt is contracted for the purpose, the question of the propriety of the expenditure should be submitted to the people of the State, under the provisions of section 12 of article VII of the Constitution. The subject is of sufficient importance to merit the careful consideration of the Legislature.[12]

NEW METHODS OF TAXATION.

The vast growth of the State in population and wealth during the last half century has required corresponding increase in the expenses of State and local government. Many new departments of State government have necessarily been established. Cities and villages have in many localities supplanted the simple town government. Yet the system of assessment and taxation relied upon for the chief sources of State and local revenue has, with almost the single exception of the tax upon corporations, remained substantially unchanged. While that system has served reasonably well for the purpose of subjecting real property to taxation, it has been substantially a system of real property taxation only. All attempts to extend the system to an equally comprehensive inclusion of personal property have been substantial failures.

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[12] See *post*, p. 1041, for a note on highway improvement.

Yet the increase in the amount of wealth invested in personal property during the last half-century has been much greater than the increase in the value of the real property of the State during the same period. It does not appear just and equitable that this vast amount of wealth should escape its due share of the burden of supporting the government which renders its accumulation possible.

It may be true theoretically, as some assert, that the burden of a real property tax, by the working of natural laws, is finally distributed equitably upon all wealth, because all wealth is primarily derived from land. But it must be conceded that, practically, this process of alleged distribution is slow, and that vast fortunes of personal property may change hands many times while a real property tax is claimed to be slowly working out a distribution of its burden upon the owners of personal property.

Some new system of assessment and taxation must be adopted to impose upon personal property its equitable share of taxation. The inquisitorial character of an income tax, or of an assessment based upon the sworn statement of the person assessed, is odious to the American people, who are not accustomed to have government officers prying into their private affairs. Moreover, such a system is a constant temptation to loose swearing or downright perjury, and each man's perjury encourages his neighbor to like falsifications to escape paying his just share.

The problem of equitable taxation is difficult and not yet solved, and probably can only be solved by a succession of experiments, with some failures.

But it is respectfully suggested as worthy of the consideration of the Legislature, whether a satisfactory solution of the problem of taxing personal property may not be found in a graduated probate and succession tax upon the personal property of decedents, developing into a complete system the theory of the collateral inheritance tax. Already most estates of decedents are carefully appraised by disinterested parties through the machinery of our Surrogates' Courts. Without going into details, it seems possible to devise a system requiring all estates of decedents over a certain valuation to be administered in a Surrogate's Court, at least so far as to obtain an appraisal of the personal property thereof, and after allowing reasonable exemptions to the immediate next of kin, a percentage tax may be imposed upon the remainder, reasonably graduated by an increasing percentage as the relationship of those who are to receive is more remote, and as the valuation of the estate is greater. The theory of such a graduated percentage tax is not harsh or inequitable. Such a system has, I am advised, existed for a long time in England and has worked well, and the propriety of its adoption here is suggested for your consideration.[13]

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[13] An act passed in 1891, chapter 215, exempted from taxation under the collateral inheritance tax act personal property passing to specified members of the decedent's family not exceeding $10,000 in value, and imposed a tax of one per cent on the excess. This family exemption was continued in the revised taxable transfers act of 1892, chapter 399, and also in the tax law of 1896, chapter 908, and amendments.

RENEWAL OF PREVIOUS RECOMMENDATIONS.

I desire specifically to renew certain recommendations contained in my previous messages, which have not as yet been finally acted upon by the Legislature, as follows:

First. A measure providing for an immediate constitutional convention upon a just and proper basis of representation.[14]

Second. An honest, just and reasonable excise law.[15]

Third. A general revision of the tax law of the State, whereby real and personal property shall be placed upon an equal footing for all purposes of taxation, and personal property be compelled to bear its just proportion of the public burdens.[16]

Fourth. An act providing for the compulsory investigation of fires.

Fifth. The authorization of a commission to act with the representatives of other States to consider the question of the adoption of uniform marriage and divorce laws.[17]

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[14] See 1887, note 12, *ante*, p. 311. An act providing for a constitutional convention was passed in 1892, chapter 398. The act was amended in 1893, chapter 8, and members of the convention were chosen at the general election in November of that year. The Convention met in April, 1894. A revised constitution proposed by the Convention was approved by the people at the general election in that year, and for the most part took effect January 1, 1895.

[15] See 1889, note 16, *ante*, p. 688 for reference to excise bills. A new excise law was passed in 1892, chapter 401. This act was repealed by the liquor tax law of 1896, chapter 112, which established a new excise policy.

[16] A new tax law was enacted in 1896, chapter 908. Several commissions were afterward appointed to consider the subject of a revision of the tax laws.

L. 1896, chap. 908, was sustained as to various provisions in People ex rel. A. Klipstein & Co. v. Roberts, (1899) 36 App. Div. 597, affirmed in 167 N. Y. 617; Wallace v. International Paper Co., (1903) 84 App. Div. 88; Orr v. Gilman, (1901) 183 U. S. 278, affirming (1901) 167 N. Y. 227; Re Delano, (1903) 176 N. Y. 486; Re Fuller, (1901) 62 App Div. 428; Pratt Inst. v. City of New York, (1905) 183 N. Y. 151. As amended in 1900, chap. 658, in Re Wallace, (1902) 71 App. Div. 284.

[17] By chapter 205, passed April 28, 1890, a commission was to be appointed by the Governor and Senate composed of three members to be known as "Commissioners for the Promotion of Uniformity of Legislation in the United

Sixth. An act requiring the weekly payment of wages to employes by corporations.[18]

Seventh. A measure creating a State commission which shall include supervisory powers over gas, telegraph, electric light and telephone companies.[19]

Eighth. An act to provide for compulsory voting.[20]

The reasons for this were fully set forth in my last annual message. The fact that in the recent election in this State 300,375 electors did not vote who voted in the preceding election is a sufficient commentary upon the necessity for securing a more complete expression of the people's will at the polls.

Ninth. A measure providing for rapid transit for New York city, in which the local authorities, by themselves or officers of their selection, shall be vested with the responsi-

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States," among other things to consider "whether it would be wise and practicable for the State of New York to invite the other States of the Union to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several states," relative to marriage and divorce, insolvency, the form of notarial certificates and other subjects.

The commissioners were to hold office two years, and were required to report to the Legislature at its next session. On the 27th of April, 1891, the commission presented to the Legislature a report showing what had been done for the purpose of carrying out the suggestions contained in the act creating the commission. It was recommended that the terms of office of the commissioners be extended to four years. The term was so extended by an act passed in 1892, chapter 538. The provision limiting the term of office of the commissioners was abrogated by chapter 349 of the Laws of 1894.

Other States joined New York in forming a national conference of commissioners on uniform legislation. The first conference was held at Saratoga in August, 1892. Several annual conferences were afterward held, and numerous subjects of legislation were considered. One important result of the work of these conferences was the preparation of a uniform "negotiable instruments law" which was passed by the New York Legislature in 1897, chapter 612, and which has become the law in a large number of other States.

[18] The subject of the weekly payment of wages to employes was included in chapter 388, approved May 21, which required such payments by certain specified corporations.

[19] As to a state gas commission, see 1887, note 13, *ante*, p. 312.

[20] As to compulsory voting see 1889, note 8, *ante*, p. 676.

bility and management of whatever scheme may be adopted, rather than commissioners selected at Albany by the Legislature and Governor. The vital principle of home rule should be observed in this matter as well as in all other matters pertaining to municipal improvements and to local administration.[21]

Tenth. An act abolishing the State Board of Charities and State Board of Health, and vesting their respective powers in single officers, thereby concentrating responsibility.*

Eleventh. A measure limiting, regulating and further restricting the powers of corporations in the issuing of stock and bonds.

A WORLD'S FAIR IN 1892.

Since the adjournment of the Legislature in May last the suggestion has found ready favor in all parts of the United States that the four hundredth anniversary of the discovery of America by Columbus should be celebrated in 1892 by a vast international exhibition, to be held in one of our large cities and to illustrate the great progress that our country has made in four centuries. That such an exhibition or fair, properly planned and conducted, would be of immense value to this country — commercially, intellectually and politically — is too evident to require argument; and every citizen is interested in seeing that the suggestion is carried out.

There has arisen, however, among our larger cities, a keen rivalry with regard to the place in which the fair shall be held. New York, Chicago, St. Louis and Washington are all contestants for the honor, which Congress is expected soon to award by naming, in its official recognition and indorsement of the undertaking, the favored city.

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[21] As to rapid transit in New York, see 1889, note 31, *ante*, p. 761.

* An act passed in 1901, chapter 29, abolished the State Board of Health, established the State Department of Health, and created the office of State Commissioner of Health.

We, as citizens and representatives of New York State, naturally prefer that Congress should recognize the claims of our metropolis; but aside from our preferences we believe that no other city presents so many advantages for the successful inauguration and conduct of a great exhibition. These have been frequently stated in the last few months, and it is not necessary to repeat them here. New York is the greatest city of the continent in wealth, in population, in territory, in influence, in intellectual facilities and material resources, and in commercial and manufacturing importance. It is the best known city the world over. These considerations ought to be sufficient to secure for it a fair, the representation of whose exhibits is not to be confined to the limits of our own country, or of our continent, but will be extended to the whole world.

I need not impress upon the Legislature the necessity of encouraging by every proper means the holding of the exhibition in the city of New York. Such encouragement will be approved by every citizen who has at heart the best interests of the State. The committee which has been recently formed in New York, and which is proceeding with energy and discretion in furthering the claims of the metropolis, will undoubtedly seek legislation at your hands. Its requests should meet a prompt and hearty response, as I have no doubt they will. Immediate and generous action by the Legislature is likely to have an important influence in determining the attitude of Congress. Let there be no uncertain sound in the expression of New York's Legislature upon this question which materially affects the people's prosperity. It is a question not complicated by political or partisan considerations, and should be met by the Legislature with that same unanimity of action which has marked the sentiment of our citizens everywhere in advocacy of this national project.

Should Congress determine, however, that the interests of the exhibition would be better served in some other city than New York, which, nevertheless, we do not expect, our support of the undertaking ought to be no less sincere and unfaltering, and whatever can properly be done by the Legislature to facilitate the representation from this State or to promote the success of the exhibition, ought to have the same faithful consideration as if our own chief city had received the designation from Congress. The rivalry of cities must not be permitted to interfere with the success of the exhibition.[22]

FINANCES.

The State is substantially out of debt. What little debt still remains is being paid as rapidly as the law permits.

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[22] See special message of February 7, urging the passage of the pending world's fair bill, and a memorandum of February 20, approving the bill as passed, which became chapter 7. The act authorized the municipal authorities of the city of New York to acquire land north of Eightieth Street, to be used for the purpose of establishing a world's fair including the erection of necessary buildings. The act authorized the expenditure of $10,000,000 by the city.

On the 25th of April, 1890, Congress passed an act providing for a World's Columbian Exposition to be held at Chicago. In 1892 the Legislature passed an act, chapter 236, which authorized the Governor to appoint three persons, who, with three appointed by the President under the act of Congress, were to constitute the general managers of the New York exhibit at the exposition. The act also provided for the appointment of three commissioners in each judicial district. The board of general managers was required to appoint a board of women managers. The board of managers was also authorized to provide for appropriate ceremonies and for the commemoration within the State on the 12th day of October, 1892, of the 400th anniversary of the discovery of America. New York's exhibit at the exposition was not to be open on Sunday. The act appropriated $300,000, and limited the expenses to that amount.

Another appropriation of $300,000 was made in 1893, chapter 188. The World's Columbian Exposition was held in Chicago in 1893.

It has been reduced $190,500 during the past fiscal year by the payment of $100,000 Niagara Reservation bonds and $90,500 Canal bonds.

On the 30th day of September, 1889, the total funded debt was $6,774,854.87, classified as follows:

General Fund (Indian Annuities).........	$122,694 87
Canal debt............................	6,052,160 00
Niagara Reservation bonds..............	600,000 00
	$6,774,854 87
Aggregate Sinking Fund.................	4,466,625 34
Total debt unprovided for, but not yet due............................	$2,308,229 53

The tax rate for the current fiscal year is three and fifty-two one hundredths mills ($3\frac{52}{100}$), which on the present assessed valuation will yield $12,557,352.74.

The amount received from notaries during the last fiscal year, arising out of their appointment as provided under chapter 230 of the Laws of 1886, is the sum of $41,016.75, being nearly double the entire expense and salaries of the Executive Department.

There has been received during the same period from the "Pool Tax," so-called, the sum of $27,210.72, which is to be distributed to the various county fairs throughout the State.

CONCLUSION.

The proper presentation of the subject of electoral reform having occupied so large a part of my message, I omit to mention other recommendations which suggest themselves to me and which I may exercise the privilege of transmitting to the Legislature later in the session.

DAVID B. HILL.

SPECIAL MESSAGES.

January 13. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *January* 13, 1890.

"It has been satisfactorily established before me that William F. Pitshke, a justice of the City Court of New York, was, in November, 1888, while in the discharge of his duties, stricken with paralysis and has since been incapacitated from performing any judicial functions, and his illness is of such permanent character as will probably prevent his ever resuming the duties of his office; and that the said justice is now in Europe, where he has been since about May, 1889.

In consideration of these facts, on December thirty-first, last, I made an order suspending the said justice from the exercise of the duties of his office and directed therein that his compensation should cease from that date, and now, under the authority vested in me by section eleven of article six of the Constitution, I recommend to the Senate the removal of the said justice from office.[23]

DAVID B. HILL."

January 14. To the Assembly: Transmitting the annual report of the Commissioners of Pilots of the port of New York, and the annual report of the Civil Service Commissioners.

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[23] The Governor's communication was referred to the judiciary committee for consideration, and on the 24th of January the committee presented a resolution which was adopted, directing that proceedings be instituted for the removal of Justice Pitshke, but his death, which occurred two days later, the 26th, prevented further action.

On the 29th of January, Governor Hill received notice of a vacancy caused by the death of Justice Pitshke, and this vacancy was filled on the 24th of February by the appointment of James M. Fitzsimons.

January 20. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 20, 1890.

"The portion of northern New York known as the 'Adirondacks' has become a great summer and winter resort for persons seeking pleasure or health, not only from our own State, but from other sections of the Union. It is rapidly becoming a nation's pleasure ground and sanitarium.

The State now owns a large portion of this section, which has been placed under the control of a Forest Commission. The present statutes seem to contemplate retaining all the lands that come to the State from tax sales as part of a vast park, without reference to quality, quantity or locality; and many parcels thus reserved are small and are not connected with the main body of State lands.

It seems to me that the limits within which lands are to be retained by the State for this purpose should be settled and defined, and should include the wilder portion of this region covering the mountains and lakes, at and around the headwaters of the several rivers that rise in that locality, including the Hudson river; and that all the lands outside of these limits should be subject to sale as other State lands are sold. If practicable, these lands could be exchanged for wild and forest lands within the limits prescribed.

Considerable complaint has been made that persons desiring to build summer camps or cottages upon lands belonging to the State have not been permitted to do so. I can see no reason why, under suitable restrictions, small parcels should not be leased at a moderate rental for such purposes. Such occupants would have an interest in preserving the forests in all their beauty, and would be the best of fire wardens and foresters, while the wilderness would thus afford a summer home to persons of moderate means, as well as to the wealthy.

The subject is worthy of the most careful consideration. It is represented to me by those who are familiar with the situation and needs of that section, and in whose judgment I have confidence, that a State park, from fifty to seventy miles square, can be obtained by the State in that region at comparatively trifling expense, and that when obtained, if judiciously and sensibly managed, it will prove of inestimable value and benefit to the whole country.

A personal inspection on my part last summer of a portion of the Adirondack region confirms, in my judgment, the desirability of some appropriate legislation upon this subject.

It is believed to be the true policy of the State to encourage rather than retard visitation to this delightful region, and a broader and more enlightened policy than that which has heretofore been followed should be pursued. Several reasons are apparent why it is expedient that some independent commission should investigate this matter and originate a scheme for the carrying out of the suggestions herein outlined, rather than the Forest Commission, whose powers are already limited by statute and whose duties are confined to a mere preservation of the forests.

I think the Adirondack forests, instead of being an expense and burden to the State, are capable, under the liberal policy here suggested, of paying all the expenses of their preservation, as well as of yielding a handsome revenue to the State.

I would, therefore, suggest the propriety of authorizing the appointment by the Governor of a commission, to be composed of three or five public spirited and well-informed citizens familiar with the Adirondack region and its needs, and having no adverse interests (who shall serve without compensation, except traveling and other necessary expenses), to investigate the whole subject, and to recommend to the Legislature a plan for the creation of a State park in the Adirondacks and to fix and define the limits thereof, and for leasing small parcels thereof for summer camps, cottages and buildings, and for acquiring all the forest lands within its limits, and to make such other recommendations as the commission may deem proper.[24]

DAVID B. HILL."

January 23. To the Assembly: Transmitting the annual report of the Cooper Union.

January 29. To the Assembly: Transmitting the annual report of the State Commission in Lunacy.

February 7. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *February* 7, 1890.

"The measure known as the 'World's Fair Bill,' agreed upon by the citizens' committee of New York city, was presented to both houses of the Legislature two weeks ago.

It was a measure which had been carefully prepared by able lawyers and one which seemed to meet public approbation. The names of the commissioners proposed in the bill, while nominally selected by the mayor, had been virtually agreed upon by the public-spirited and liberal citizens of New York who inaugurated the patriotic movement for a world's fair. Their selection met with universal approval. They were chosen not on account of their political affiliations, but by reason of their high character and business standing in the community. There was no suggestion at the time that political considerations had in the least influenced the composition of the original committee, nor has there been any such intimation until within the past ten days. Its members have been working together harmoniously and satisfactorily during the past five months with credit to themselves and honor to the city of New York. Through their exertions over $5,000,000 have been voluntarily subscribed for the fair, and it is clear that the public expected and desired a continuance of this committee in charge of the good work.

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[24] Chapter 37, passed March 11, authorized the purchase of land in the forest preserve counties, to be set apart as a state park. The act appropriated $25,000 for the purchase of land. See the Governor's memorandum of March 11, accompanying the act. An act passed in 1892, chapter 707, established the Adirondack Park, and provided for the purchase and sale of land in the forest preserve.

It is entirely immaterial what the political sentiments of a majority of the committee may be. It is sufficient to know that the members were fairly chosen and were practically selected by the citizens of New York themselves, and any change by the Legislature would naturally be regarded as a reflection upon the original committee and its proceedings. It is greatly to be regretted that the bill in its original shape was not promptly passed by the Legislature. Every day is important, and it is feared, with reason, that the delay which has already occurred may prevent favorable action at Washington. The friends of New York at the national capital are anxiously awaiting the action of this Legislature. Further delays are dangerous.

It is, perhaps, needless to recite the unfortunate controversies which have occupied the attention of the Legislature during the past two weeks in the effort to add new names to the original committee. The bill first passed the Assembly with but one dissenting vote and without any attempt to change the commissioners named therein or to add others. A public hearing was had upon the bill in the Senate, but at such hearing no one ventured to suggest that any addition to the commissioners was desired by anybody. It was not until the special Senate committee reported the bill with the addition of twenty-two new commissioners that the public was aware that any addition was contemplated.

It is submitted that no good reasons have been urged why this addition should be made. There was no popular sentiment demanding a change. Not a single newspaper had suggested it. No prominent citizen had publicly advocated it. No complaint whatever had been made of the non-partisan actions of the committee. The additional commissioners whose names have been proposed were not asking to be named, and some of them had taken no interest in the fair and had not contributed a dollar to its success.

It is extremely unfortunate that any such question should have arisen to disturb the harmony of New York's efforts to secure the fair and to endanger their success. I appeal to the Legislature to lay aside political considerations and to pass the bill as it was originally presented. I am ready promptly to approve the bill, provided it shall be presented to me substantially as it was agreed upon by the mayor's and citizens' committee. It must be conceded that the attempt to engraft upon it the names of additional commissioners imperils the final success of the measure.

The importance of the measure, the urgent necessity for its speedy enactment into a law, the great benefits likely to be conferred upon the State and country by the securing of a world's fair in New York city, all demand that merely partisan or personal consideration should be waived in an honest effort to pass the bill that is satisfactory to the contributors, who, by their generosity, have made possible the realization of this laudable undertaking. The highest compliment which can be made to the committee's bill is the fact that, after two weeks' discussion in the Legislature, no amendments, aside from that providing for new commissioners, have been suggested, except a few trifling changes of phraseology and detail. Careful reflection has vindicated the wisdom of the bill in its entirety, and affords additional argument for its acceptance substantially as it was presented to the Legislature. The citizens of New York city are not asking the State for a dollar of money, but they simply desire legal authority under which a world's fair can properly be held at their own expense, and they desire the privilege of naming their own commissioners to expend their money. It is respectfully submitted that they should be given that privilege.

The best men of all parties are demanding daily that the bill in its original shape shall be enacted at once, and I appeal to the Legislature to heed this almost unanimous sentiment and thereby render a patriotic service to every section of the State and to all its citizens. [See note 22.]

DAVID B. HILL."

February 20. To the Assembly: Transmitting the annual reports of the Adjutant-General and State Commissioners of Health.

March 4. To the Assembly:

Veto of a bill entitled "An act to amend chapter 156 of the Laws of 1857, entitled 'An act to incorporate the Malone Water Works Company,' as amended by chapter 161 of the Laws of 1886; and authorizing said company to make agreements, contracts, grants and leases for the sale, use and distribution of water in the village or town of Malone." [25]

"At the informal hearing had upon this bill certain amendments were suggested as necessary, which were substantially agreed upon by the parties represented at the hearing and affected by the measure. It was understood that the bill was to be recalled on Friday last and the amendments made accordingly; but the early adjournment of the Senate prevented the bill being recalled except by one house. This being the last day upon which action can be taken, I am compelled to withhold my approval from this bill, with the suggestion that another bill can be immediately introduced containing the amendments agreed upon."

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[25] This bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chapter 36, on the 11th of March.

March 10. To the Assembly:

Veto of a bill entitled "An act to amend an act entitled 'An act to amend chapter 249 of the Laws of 1864, entitled "An act to amend an act entitled 'An act to provide for the incorporation of villages,' passed December seven, 1847, and the several acts amendatory thereof, so far as the same relate to the village of New Rochelle, in the county of Westchester," and the several acts amendatory thereof.'" [26]

"It is conceded that the title of this act is defective, and that to insure a proper form of legislation it should be amended. A resolution to recall the bill for that purpose passed the Assembly, but failed in the Senate on Friday last, owing to want of a quorum."

March 10. To the Assembly:

Veto of a bill entitled "An act to legalize certain bonds of the village of Port Chester."

"The objection to this bill is that it legalizes in a wholesale manner all the bonds heretofore issued by the village of Port Chester, purporting to be issued by virtue of certain proceedings of the board of trustees of that village in relation to the construction of sewers and drains. The particular defects which are claimed to exist, and which it might be proper to legalize, are not specified or pointed out. There is no objection in proper cases to legalizing bonds issued which might prove defective owing to technical omissions or irregularities, but it is not within the proper province of the legislature to legalize generally all the acts of boards of trustees in relation to a particular matter. The precise defects proposed to be cured ought to be specified in the bill itself."

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[26] This bill was not passed over the veto, but a new bill was passed, correcting the errors pointed out by the Governor, and became a law, chapter 56, on the 19th of March.

The bill was not passed over the veto.

March 10. To the Assembly:

Veto of a bill entitled "An act to legalize the acts of John W. Howe, a justice of the peace of the town of York, in the county of Livingston."

"For several years I have declined to approve special laws legalizing the official acts of justices of the peace. Official acts of a justice of the peace who has been duly elected, and is acting as such, cannot be questioned collaterally, even though he may have neglected to take an official oath or to file an official bond. He becomes an officer *de facto,* with color of lawful title, and, while his official acts may not protect himself, still they are valid in so far as the public or third persons are concerned. This rule is well settled, and hence there is no public necessity for the passage of this special act. The reasons for my withholding the approval of bills of this character are more fully and at large stated in a veto message addressed to the Assembly on February seventeenth, 1887, and to be found on page 41 of my public papers of that year,* to which the Assembly is respectfully referred."

The bill was not passed over the veto.

March 11. To the Assembly:

Veto of a bill entitled "An act to amend chapter 131 of the Laws of 1885, entitled 'An act to incorporate the city of Amsterdam.'"

"This bill does not seem to have received proper consideration. It proposes an innovation, of doubtful propriety, in the manner of designating official newspapers for the publication of legal notices and the proceedings of the common council. Instead of authorizing the selection of two newspapers of opposite parties, in which to publish such notices and proceedings as are contemplated by the present charter of Amsterdam, it proposes that such printing shall be let by contract to the lowest bidder, and limits the whole amount which may be expended in any one year to the sum of one thousand dollars. This limit, it seems. cannot be exceeded, no matter what may be the extent of the printing necessarily required to be performed. In making bids it would be impossible for the newspapers to determine what amount of work might be required from them.

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* *Ante,* p. 328.

This bill proposes to inaugurate a system applicable to Amsterdam which has not been adopted by any of the other cities of the State, as I am advised. It has uniformly been regarded as the true policy to require the publication of legal notices and proceedings, to a greater or less extent, in two newspapers of opposite politics, so that all the people can be kept informed of the acts of the common council. Any other course compels a citizen who desires to be informed as to the doings of his city government to subscribe to a newspaper of opposite politics to his own. The giving of full and adequate information to the people of the proceedings of their municipal servants must be regarded as an object for which moneys may be well expended.

The session laws of the State are required to be published in two newspapers of opposite politics, and this course which has been long followed has seemed to meet with general approval.

Undoubtedly the motive for this bill is praiseworthy in so far as it endeavors to secure economy in public expenditures in the city of Amsterdam, but it may well be contended that economy may more properly be exercised in other directions, and by a measure more carefully considered.

There is no objection to an amendment to the charter whereby the charges for official advertising per folio may be fixed at reasonable figures, but grave objections exist to the present amendment limiting the publication of legal notices and proceedings in a single newspaper which shall be the lowest bidder. Besides, no provision seems to have been made for the contingency which may arise in case no bids shall be made by any of the newspapers. Such a result would seriously affect all the legal proceedings which might be pending for the opening of streets, or the construction of sewers, and other similar matters, and would greatly embarrass any public improvements which might be contemplated.

The bill in its present form is too sweeping in its provisions, and bears evidence of hasty and ill-advised consideration."

The bill was not passed over the veto.

March 14. To the Assembly:

Veto of a bill entitled "An act to authorize the board of supervisors of the county of Onondaga to sell the premises now used as a penitentiary and jail, and to purchase a new site and erect suitable buildings thereon."[27]

"The bill is conceded by its friends to be special legislation. Provision for just such objects as the bill seeks to accomplish has been made in a general statute, chapter 160 of the Laws of 1885. By this general law the affirmative votes of two-thirds of the members elected to two successive boards of supervisors, at their annual meetings, and the subsequent affirmative votes of two-thirds of all the electors voting upon the proposition, are necessary to secure the removal of the site of any county building or buildings. These are stringent provisions, designed to prevent hasty and ill-considered action on the part of boards of supervisors in the disposition of matters in which the people of the county are vitally interested. The bill before me would nullify the provisions of this general statute, so far as Onondaga county is concerned, and confer upon the board of supervisors of that county the arbitrary and absolute power of determining the change of site of the buildings now used for a penitentiary.

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[27] The county law, L. 1892, chapter 686, made important modifications in the act of 1885, chapter 160, relative to changing the site of county buildings. The new law authorized the board of supervisors to change the site of a county building by a majority vote, subject in certain cases to the approval of the people, but such approval was not necessary if the site of a county building was to be changed to another place in the same city or village. As to changing sites of almshouses, see L. 1891, chapter 5, and 1899, chapter 133.

I do not perceive the wisdom of such legislation. If the general act is too severe in its requirements, or if an exception is desired to be made in the case of county buildings used as penitentiaries or jails, or if for some particular reason it is deemed best to secure the removal of these particular buildings immediately, it would seem as if the proper and wise course of action were by amendment to the general law, and not by special act. The value of general laws is not apparent if they are to be disregarded to meet particular cases."

The bill was not passed over the veto.

March 17. To the Assembly: Transmitting the annual report of the Commissioners of Quarantine, together with the Health Officer's report to said Commissioners.

March 25. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 25, 1890.

"Senate bill No. 117, generally known as the 'Saxton Ballot Reform Bill,' is now before me for consideration.[28] As is well known, it establishes a new system of voting in this State. It abolishes the existing election laws, and the changes contemplated are conceded to be most important and radical.

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[28] See *post*, p. 1044, for a note on judicial aid in legislation.

The objects which it professes to accomplish are unquestionably commendable. Many of its features are excellent and several have been recommended by me in my annual messages during the past two years.

But certain of its provisions are believed by me to be in violation of the Constitution of this State. This conviction is deep-seated and controlling, and has been confirmed by the concurring opinions of many leading lawyers of the State. Under the existing situation I cannot conscientiously approve the bill in its present shape, or consistently permit it to become a law without my signature. I have, however, no mere pride of opinion in this matter, and will cheerfully acquiesce when convinced that my views are unsound. The bill affects vast public interests, and relates to the sacred right of suffrage and the high prerogatives of citizenship, but if it should be enacted into law, the objectionable provisions are so interwoven with the other features of the measure that serious consequences and much confusion and injury must inevitably ensue if it shall thereafter appear that the questionable provisions or any portion thereof are in conflict with the Constitution. In that event the whole election machinery of the State would be broken down and destroyed.

The advisability of an early adjudication of the validity of this proposed measure (especially while the Legislature is in session), is very apparent. The best interests of the State would be subserved and the cause of electoral reform greatly promoted and its success hastened, if the constitutionality of these provisions could be informally determined by the Court of Appeals at this time, for the information and guidance of both the Legislature and the Executive.

The Constitutions of several States, notably Massachusetts, Maine, New Hampshire, Colorado and Florida, expressly provide that upon the application of the Executive (and in one or two of them upon the application of the Legislature) the highest court of such State shall render an opinion informally upon the constitutionality of any proposed measure pending before the Executive, and upon which he may desire such information for his official action.

It is to be regretted that some such provision is not contained in the Constitution of our own State, but in view of the vast importance of this particular measure, as well as of the dangers which may be avoided, and of the good results which are likely to ensue if a better understanding of the constitutional questions supposed to be involved can be arrived at without litigation and without further conflict between the Legislature and the Executive, it is believed that the Court of Appeals, upon the joint request of the Legislature and the Executive, would, as a matter of courtesy due from a co-ordinate branch of the State government, readily undertake to examine the proposed measure, and informally express an opinion as to the constitutionality of its provisions.

This course is not wholly without sanction or precedent. Formerly the chancellor, together with certain judges of the old Supreme Court, as members of the 'Council of Revision,' were accustomed to render their opinions to the Executive upon the constitutionality of proposed legislation; and in 1872, upon request, the Court of Appeals expressed its opinion upon certain legislation then pending and awaiting approval. The jurisdiction of the Court of Appeals is not conferred by the Constitution, but by statute.

The time for my consideration of this measure does not expire until April second. The court, if promptly convened, will have ample time before that date for the examination of the questions involved.

The two divisions of the Court of Appeals represent opposite political sentiments. The people of the State, without distinction of party, have the highest respect for that court, and unbounded confidence in its decisions. It is a court which will not be governed by partisan prejudices, or affected by unintelligent clamor, or influenced by improper appeals, or deterred from the bold and fearless discharge of its duty by any considerations whatever.

To such a tribunal the friends and opponents of this measure may safely entrust the consideration of the constitutional questions which are alone proposed to be submitted to it.

It is, therefore, recommended that a joint resolution be passed by the Legislature, respectfully requesting the Court of Appeals (First and Second Divisions) to reconvene at their earliest convenience for the purpose of examining this measure and expressing their opinions, informally, as to the constitutionality of the provisions thereof.

It is my earnest desire to aid the solution of the problem of electoral reform, and that spirit alone has prompted this communication. I trust that the Legislature, with a similar desire to secure practical results in the effort to abolish the evils now attending our elections, will meet my suggestion in the same spirit and will readily acquiesce in my request to refer the constitutional questions in controversy to a competent non-partisan tribunal.

DAVID B. HILL."

March 31. To the Senate:

Veto of a bill entitled "An act to promote the independence of voters at public elections, enforce the secrecy of the ballot, and provide for the printing and distribution of ballots at public expense." [29]

"The Legislature has refused to co-operate with the effort of the Executive to obtain an immediate practical determination of the constitutionality of this bill. Such determination was desired by the Executive in order that the bill might become a law, if declared to be in harmony with the Constitution of this State, or that certain features thereof might, if declared unconstitutional, no longer occupy the time and attention of the law-making powers. The same provisions which the Executive has for the past two years declared to be, in his judgment, unconstitutional, are repeated in this measure without substantial modification. The situation demonstrates that, upon the vital point of constitutionality, there exists an irreconcilable difference of judgment between the Legislature and the Executive, which no argument, and nothing short of an authoritative opinion can remove. If the bill should be allowed to go upon the statute books and then be declared unconstitutional, all elections held thereunder would be vitiated, the title of every elected officer would be void or uncertain, and confusion, amounting possibly to anarchy, would take the place of orderly government. To test the constitutionality of such a measure by actual experiment and subsequent litigation, would be costly at best, and if resulting adversely to the bill's constitutionality, would be fatal to the peace and order of the State.

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[29] This bill was not passed over the veto, but a ballot reform law was passed, chapter 262. See memorandum May 2, accompanying this bill, and also note 28.

The Attorney-General, chosen by the people as the legal adviser of State officers in such emergencies — the only official of whom the Executive has the right to require a legal opinion — has advised me that certain provisions of this bill are unconstitutional. Eminent lawyers of both political parties have expressed to me the same opinion with regard to other provisions. The Court of Appeals, under our present Constitution and less than twenty years ago, furnished an opinion to Governor Hoffman that a certain bill then before him, of much less public importance than the bill now before me, was of at least doubtful constitutionality. This precedent of the present court is sufficient authority for the reasonableness and propriety of my proposition to the Legislature, of a joint submission of the constitutional questions involved to the arbitration of the Court of Appeals. To that tribunal such questions would ultimately go were the bill enacted into a statute, and the opinion of the court now given would be accepted by all parties as final. But the Legislature refuses to accept the proposition and I am compelled to act upon my own judgment both as to the law and the facts, and I have no disposition to shirk the responsibility.

It is my clear conviction that if this bill should take its place among the statutes of the State, it would be void at best, and would throw the whole electoral machinery of the State in confusion. I would be false to my official duty if I should knowingly consent to what I believe would bring such calamities upon the State.

The attitude of the Legislature has left me no other alternative than to decline to approve the measure. Upon the Legislature must rest the responsibility of failure to secure a fair and honorable solution of the problem of electoral reform.

My objections to one feature of this measure are well known. They have been reiterated in two annual messages, as well as in two special veto messages of similar measures, and in many public utterances. Every member of the Legislature is familiar with them. The majority, when it passed this bill in its present shape, well knew that it would not and could not consistently be approved.

There was no effort made to modify its provisions so as to conform them in any material respect to the views of the Executive repeatedly expressed. Every proposition or compromise suggestion tending in that direction was unceremoniously voted down, and Executive disapproval could not have been rendered more certain had it been deliberately invited or desired. It is not intended in this communication to repeat at any length the arguments heretofore presented upon this subject. A brief reference to them must suffice. I am opposed to the exclusively official ballot provided for in this bill. By the term 'exclusively official ballot' is meant a ballot upon which the names of all candidates of every party, faction or combination are required to be printed together thereon, which is printed solely by the State and is obtainable at the polls a few moments before voting, and nowhere else and at no other time, which it is compulsory upon the voter to use, and any other than which he is prohibited from voting.

I believe that every voter should have the right to prepare his ballot at his own home or wherever he pleases, and to bring it with him to the polls and vote it in secret. I deny the constitutional right of the Legislature to compel an elector to accept a ballot containing the names of candidates other than his own — candidates in whose nomination he has had no part and for whom he does not intend to vote — and impose upon him the burden of erasing all such names under penalty of disfranchisement, and require him, if he votes at all, to write or paste the names of his candidates upon such a hotch-potch document.

The Constitution guarantees to the people a continuance of the right to vote 'by ballot,' which they enjoyed at the time of its adoption. (Art. 2, § 5.)

The kind of ballot proposed by this bill is not the kind of ballot then in use, nor that which the Constitution contemplated.

In fact, the species of conglomerate ballot now sought to be adopted has only been invented a few years and was wholly unknown when our present Constitution went into effect.

A paper ticket containing the names written or printed, or partly written and partly printed, of the candidates and of those only for whom an elector intends to vote, and containing the names of the offices which they are to fill, is the ballot which was in existence when our Constitution was adopted and was so defined by statute.

That species of ballot cannot be changed without an amendment of the Constitution. The Legislature has no power to alter it.

Every elector under our Constitution has a right to prepare his own written or printed ballot and to bring it with him to the polls. The Legislature may regulate its form and shape; it may designate the kind and quality of paper to be used; it may require a uniform style of caption or indorsement; it may prescribe separate tickets for different offices, but it cannot change the essential characteristics of a ballot as it existed when the Constitution was framed. The provisions for an exclusively official ballot, as contained in this bill, are unconstitutional, among others, for the following reasons, which are stated without elaboration or extended argument:

First. They unreasonably hinder and impede the exercise of the elective franchise and discriminate against the individual elector.

Individual electors are not permitted to print a ballot of their own containing their own candidates, but must content themselves with writing or pasting another ballot foisted upon them against their will.

Political parties and combinations of fifty individuals may have the names of their candidates printed and thus obtain for them recognition on an official ballot, but a single elector is deprived of any such right. The proposed statute lacks, in these and many other respects, the elements of reasonableness, uniformity and impartiality.

Second. They impose upon the elector a ballot not authorized or contemplated by the Constitution. It was demonstrated in my last annual message, by arguments never yet refuted, that the Constitution and the statutes in existence when it was adopted, when construed together, virtually define and declare what shall be deemed a lawful ballot.

Its essential elements, as hereinbefore described, cannot be added to or diminished otherwise than by a constitutional amendment.

By the terms of this bill the ballot which the elector is compelled to accept is one which contains the names of all the candidates of divers parties for whom he does not desire to vote. It is true he is graciously permitted to erase the names of those for whom he does not desire to vote, but this privilege does not relieve the constitutional difficulty. An unnecessary burden has been placed upon the elector. He must scrutinize all the names. He must be sure that he erases the right ones. He must be able to read the superfluous names. He is forbidden to have a clean *printed* ballot of his own. He must prepare his ballot at the polls and within the few minutes allotted him.

It is no answer to this proposition to say that after the elector has prepared his ballot by erasures, pasting and writing, it then conforms to the requirements of a constitutional ballot because it contains the names of those only for whom he desires to vote. He has been forced to accept, in the first instance, a ballot which he did not seek, desire, or intend to vote. He has been denied the privilege of printing his own ballot. Names whom somebody else has nominated have been printed upon it against his will, and unless he assumes the task of correcting it, he votes whatever names are upon it, and his vote is thereby wholly nullified. As well might he be required to accept a city directory and to mark out all the names therein except those for whom he intends to vote, and then call such a directory a ' ballot ' within the meaning of the Constitution.

The word ' ballot ' at the time of the adoption of the Constitution had a well-defined and popularly understood signification. There was no dispute as to its meaning, its form or its contents.

Any substantial departure from its well-recognized characteristics violates the fundamental law.

Third. The provisions for an exclusively official ballot prevent an illiterate elector from voting a secret ballot.

They absolutely compel him not only to publicly confess his illiteracy, but also to disclose the contents of his ballot to two election officers. (See § 28.) Such provisions are plainly in violation of the Constitution.

The Constitution (art. 2, § 1) prescribes the qualifications of electors. The Legislature cannot add to such qualifications. It has no power to prescribe any educational tests whatever or to *discriminate* against illiterates.

An illiterate person has equal rights with any other elector, and no regulation can lawfully be imposed which will prevent him, although illiterate, from freely casting a secret ballot of his own selection.

The provisions requiring him to receive an exclusively official ballot, and preventing him from having any other, and compelling him to select from all the names already printed upon such ballots the names of those for whom he desires to vote, or else to write or paste the names of others thereon, when he can neither read nor write, and hence cannot comply with such provisions, operate as a practical disfranchisement of an illiterate elector.

A statute regulating suffrage cannot annex an educational qualification in express terms, nor indirectly by prescribing tests which the elector cannot meet by reason of his being illiterate.

It is clear that a provision would be unconstitutional which required an elector himself to *write* the name of his candidate upon his ballot given him at the polls, and prevented his voting any other ballot or in any other manner. Such a provision would virtually establish an educational qualification. Yet such is the *practical* effect of the provisions under consideration. They prevent an illiterate elector from having his ballot prepared in advance by some friend or member of his family, and prevent his bringing a prepared or printed ballot with him to the polls, but compel him to accept at the voting place a ballot already printed and impose upon him the impossible task of reading the names thereon, or of pasting or writing other names thereon, under penalty of actual disfranchisement or a disclosure of his political preferences to the ballot clerks — strangers to him.

It is no answer to say that no additional hardship or unfair burden is imposed upon him, because, as is claimed, an illiterate elector must necessarily consult some one in the preparation of his ballot, and he might as well inform the sworn ballot clerks as to his choice as to inform others.

In the first place, he is not *necessarily* bound to inform any one. If he is not deprived of his privilege of selecting his ballot away from the polls, he may accept, without question, his ballot from a friend or partisan in whom he has implicit confidence, and may vote it without examination or disclosure of its contents. It is no one's business but his own.

But to deprive him of that option, and further to prevent his consulting a friend or a member of his family in the preparation of his ballot, and to compel him to disclose his preferences to two election officers, neither of whom may belong to his own political party, must be regarded as an infringement of his constitutional rights.

The Constitution gives an illiterate person the same right to vote as an educated one. It makes no distinctions. It recognizes no differences. The Legislature has power to *regulate* the exercise of the right of suffrage, but it has no power to prohibit, restrict or impede it. It has no power to require an elector to write out his own ballot. It cannot compel him to read it. It cannot lawfully enact any provisions which *practically* prevent an illiterate elector from voting a secret ballot.

Hence it cannot require such an elector to accept an exclusively official ballot and virtually disfranchise him, unless he can read it or can write thereon, or unless he discloses his choice of candidates to two officials.

Such provisions impose conditions which curtail and obstruct his political rights conferred upon him unqualifiedly by the Constitution.

As an illiterate elector is given an absolute right to vote under the Constitution, and as he cannot write his own ballot or read a ballot handed him for inspection, then, if the Constitution guarantees to him a *secret* ballot, it must follow that he has an *implied* right under the Constitution to prepare his ballot when, where and how he pleases, and to bring it with him to the polls and to vote it. In no other manner can his rights be fully preserved and protected.

The constitutional grant of the right of suffrage carries with it whatever is necessary for its perfect and complete exercise.

It is a manifest absurdity to assert that an illiterate elector's right to vote is preserved under provisions which require him, from an already prepared exclusively official ballot, to prepare, read or write his own ballot unaided and alone at the polls, and nowhere else, when it is an utter impossibility for him to do so; and it is equally absurd to compel him to accept the assistance of officials to whom he must disclose his ballot and at the same time to assert that he is casting a *secret* ballot.

A citizen is always permitted, under all systems, to *voluntarily* disclose his choice of candidates.

The right to cast a secret ballot is a privilege conferred upon an elector. He and he alone may voluntarily *waive* it. But a ballot is not secret which is *compulsorily* disclosed. Provisions which *compel* such disclosure violate the secrecy of the ballot.

The Constitution (art. 2, § 5) requires that our elections shall be *by ballot.*

I contend that this provision requires entire secrecy in voting. Voting by ballot means voting secretly. It means a vote exempt from compulsory observation or disclosure.

There are numerous legal authorities which amply sustain this position, but it is unnecessary to cite them here. The point is abundantly settled beyond question or cavil.

Unless secrecy is implied in the term 'by ballot,' there is nothing to prevent the Legislature from passing a law requiring every elector to vote an open ticket.

The extent of the disfranchisement under this bill cannot well be estimated. Thousands of honest citizens would be unable to vote. Thousands of others would refrain from going to the polls.

It will be observed that an illiterate, in order to be entitled to the assistance of the election officers, must swear that he is *wholly* unable to read or write. (See § 28.)

It does not say that he must be unable to read or write the *English* language.

A German, unable to read and write the *English* language, but still able to read and write the *German* language, could not conscientiously take the required oath, and hence would not be entitled to assistance and could not vote.

Besides, an illiterate elector is not given the privilege accorded to an elector suffering under 'physical disability,' to bring with him into the booth 'a person of his own selection' (§ 28), but he is compelled to accept the assistance of the two election officers or go without assistance.

The whole question may be summed up in a few words.

An illiterate person, if required to accept an exclusively official ballot upon which is printed the names of divers sets of candidates, is unable to designate his choice among so many names because he cannot read or write, and hence cannot vote. He is denied the privilege of preparing his ballot beforehand. He cannot bring it with him to the polls. He cannot have the assistance of a *friend* either at the polls or elsewhere.

In order to vote he is required to do an impossible thing, to wit: Select his candidates from numerous printed names, or else submit to a *compulsory* disclosure of his choice to the election officers. If he submits to the latter alternative, the *secrecy* of his ballot is destroyed, and a mere *promise* of secrecy on the part of the election officers is substituted for secrecy itself. It is submitted that all such provisions are in derogation of the constitutional rights of illiterate electors.

The Massachusetts Ballot Act is not obnoxious to this objection, because in that State the Constitution itself requires every elector to be able to read and write the English language.

There is another constitutional question which arises under this bill. It is submitted that the provision contained in section twenty-two, relating to the election of two ballot clerks, is unconstitutional.

That section provides for the *election* of *two* ballot clerks (where ballot clerks are to be elected, which is in about four-fifths of the State), and prohibits each political party from nominating more than one candidate, and prevents any elector from voting for more than one ballot clerk.

This provision is directly in conflict with article 2, section 1 of the Constitution, which guarantees to every elector the right to vote 'for all officers that now are or hereafter may be elective by the people.'

If two ballot clerks are to be elected by the people, then it follows that each elector is entitled to vote for two.* There is no escape from this conclusion. The question is an important one. It affects a vital part of the bill. It is conceded that *unusual* and *extraordinary* powers are conferred upon the two ballot clerks. The whole theory of the exclusively official ballot is based upon the assumption that the two ballot clerks, who are to have sole charge of all ballots, are to be legally elected on different tickets and are to belong to different political parties. If that foundation is undermined, the whole structure falls.

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* See Const. 1894, art. 2, § 6, for provisions requiring bi-partisan election boards.

It is not proposed in this message to enter into an elaborate argument to prove that the point here raised is well taken. There is absolutely no answer to it.

It is sufficient to state that the same question has lately arisen in reference to a proposed new charter for Buffalo, wherein it was sought to be provided that eight aldermen-at-large might be *elected* by the whole city, no elector however to be permitted to vote for more than four. I am advised by the Attorney-General that, at his request, ex-Judge George F. Danforth, of Rochester, late judge of the Court of Appeals, has just examined this question and he has furnished an opinion to the Attorney-General holding that the provision in question in the proposed Buffalo charter is unconstitutional, upon the ground that as eight aldermen are to be elected each elector is entitled to vote for the whole eight, and his rights cannot be abridged in the manner proposed.

That opinion is exactly in point here. There is not a lawyer in the Legislature who will upon examination seriously question its soundness. It completely demonstrates the unconstitutionality of the foundations upon which rest the support and integrity of the exclusively official ballot provided for in this bill.

The feature of an exclusively official ballot, derived from the Australian system, is one not adapted to the political system of our State. It does not harmonize with our free institutions. Under the Australian system proper, an elector cannot write or paste the name of his candidate upon his ballot, but he is only permitted to vote for a candidate thereon who has been duly nominated. That feature was contained in the original Saxton bill of two years ago, but it was rejected with great unanimity as inappropriate to our system.

The provisions for an exclusively official ballot are equally repugnant to our political institutions, and they should be as promptly repudiated.

It has been demonstrated, over and over again, that an exclusively official ballot is not essential for the promotion of secrecy or the prevention of corruption. It is difficult to resist the conclusion that nothing but mere pride of authorship prevents the friends of this measure from accepting a modification of its terms and eliminating the exclusive features pertaining to the proposed ballot.

The Legislature has seen fit thus far to insist upon the retention of an exclusively official ballot, and has manifested a disposition to accept that and nothing else. It has chosen to imperil the success of every effort to reform our elections by an adherence to this single provision.

Believing that the kind of ballot which the Legislature persists in adopting, to the exclusion of every other, is in violation of the Constitution, I have been unable to approve the measures heretofore proposed on this subject.

There has never been any serious doubt among thoughtful jurists in regard to the unconstitutionality of each of the three measures upon this subject presented to me for my action. No lawyer in the State, of any considerable standing or reputation in his profession, has ever ventured an opinion affirming their constitutionality. From a legal point of view, they have been wholly undefended and utterly indefensible.

The people of the State, while substantially unanimous in favor of electoral reform, profoundly revere and respect their Constitution and desire no measure which shall violate its provisions. They want ballot reform — but they want it agreeably to the Constitution. They will sanction no evasion; they will tolerate no violation; they will countenance no subversion of its provisions, even when proposed under the alluring name of 'reform.'

It seems needless to indicate in this communication, what has been so often outlined heretofore, the essential features of an electoral reform measure which I would cheerfully approve.

They may, however, be again summarized as follows:

First. Provisions for a general registration of electors throughout the whole State.

Second. The act to extend to all elections of public officers by ballot.

Third. The secret booth or private compartment plan. Each voter to be guaranteed absolute privacy in examining or preparing his ballot, and compelled to remain an appreciable length of time in the booth; and secrecy in voting made compulsory.

Fourth. The privilege of nominating candidates by properly certified petitions, as well as by party conventions.

Fifth. Each distinct set of nominations to be printed on separate ballots.

Sixth. No electioneering permitted within a reasonable distance from the polls.

Seventh. Official and unofficial ballots to be used. They shall be exactly alike, the official ballots being printed and furnished at public expense and delivered to the voter at the polls only by the election officers, and unofficial ballots to be furnished by parties or candidates, and obtainable at the polls or elsewhere, and may be prepared at home and brought to the polls and voted.

Eighth. All ballots when voted to be inclosed in exclusively official envelopes furnished only by election officers at the polls.

It is unnecessary to specify any other particulars or minor provisions which may be regarded as essential or appropriate to render effectual the foregoing provisions to accomplish the great objects desired, to wit: Absolute secrecy and the prevention of bribery, corruption and intimidation. They were quite fully pointed out in my last annual message, to which the attention of the Legislature is again referred.

I frankly state that I would not be unduly tenacious in regard to mere matters of detail, provided vital principles are not infringed upon.

I would not object to the substantial features of the Connecticut reform system whereby the State furnishes all the ballots, namely: Uniform blank official ballots, duly stamped, upon which, according to directions prescribed by the Secretary of State, political committees and individuals may print the names of candidates and the names of the offices to be filled; such ballots to be voted in exclusively official envelopes.

If it should be provided that an official ballot may be distributed to the voters before the election at their homes or elsewhere, as is contemplated in the proposed New Jersey reform measure, there would be no serious objection to such a ballot, although inaccurately called an 'exclusively' official ballot, assuming, of course, that no one ballot should contain more than one distinct set of nominations, and that no extraneous matters should be permitted to be engrafted upon it.

It will be observed that the principal reasons presented herein for the withholding of my approval of this measure are based upon constitutional objections. It should not be inferred from this that the measure is otherwise regarded as satisfactory. There are many defective and incongruous provisions, which, however, may be easily obviated.

One of the most glaring of its improper provisions appears in section 12. It confers an authority which has not been contained in previous bills. It declares that 'on the ballot [the exclusively official ballot] may be printed such words as will aid the voter in the preparation of his ballot for voting.'

This is clearly in violation of the intent of the Constitution, that the ballot to be used should only contain the names of the candidates and the offices to be voted for. Besides it is a mischievous and dangerous authority.

Who is to determine what shall be printed upon the ballot under this provision? Who is to decide what words 'will aid the voter in the preparation of his ballot for voting?' It might fairly be assumed by the officer who had the preparation of the ballots that every voter would desire to vote for principles, and not for men, and hence that it would materially 'aid him in the preparation of his ballot for voting,' if there were printed on each ticket a *resumé* of the principles or platforms, as he understands them, of the different parties or candidates representing them. Thus some cunning, unscrupulous and over-zealous county clerk might over one column cause to be printed, 'These candidates favor high wages for American workmen,' over another column, 'These candidates favor free trade,' over a third, 'These candidates favor cold water,' and over another column, 'These candidates favor conspiracies and socialism,' and so on.

Parties and candidates might thus be placed in a false and embarrassing position to their great detriment.

The power to do these mischievous things is expressly conferred, and there is no restraint or limitation imposed upon its exercise. It all depends upon the discretion and disposition of a single official, and for its abuse there is absolutely no remedy. It seems needless to suggest that no such provision should be permitted to be enacted into law. The contents of ballots, if not protected by the Constitution, should at least be specifically prescribed by statute, and nothing should be left to the discretion or caprice of a single official.

It is hoped that the Legislature will not finally adjourn before perfecting a practical and efficient measure of electoral reform which shall be free from the constitutional and other proper objections here urged. Public sentiment demands an honest effort to harmonize existing differences, and is not committed to any particular measure.

No man or set of men possesses a copyright upon ballot reform. What the people want is not a system peculiarly suited to foreign lands, but an American system, adapted to our own free institutions — a system which encroaches upon no just privileges and which offers a practical, not a theoretical, solution of the evils that confront us.

No man realizes more thoroughly than do I the necessity for guarding the purity and secrecy of our election system. No man can appreciate more vividly than do I the dangers to our institutions in the improper use of money at the polls. When men are able to obtain high places in government, not by virtue of their fitness, but by reason of their immense wealth, our country has begun a reign of plutocracy, and republican institutions are threatened. When our election systems permit bribery and intimidation to flourish unchecked, depraving and debasing the poor and the unintelligent, then democracy begins to be a failure and government by the people is a sham. We have come to see our polling-places turned into auction rooms and our offices sold to the highest bidders. We have seen our country disgraced by the spectacle even of a national administration assuming power as the reward of wholesale bribery and intimidation, with funds supplied by the enriched recipients of legislative favors. To belittle such evils or consciously to obstruct their removal would be to record one's self a public enemy, deserving only the condemnation of his fellow citizens.

Yet it is unfortunate that this great popular movement which has been inaugurated for electoral reform has been delayed by men who seek to use it for the purpose of limiting and restricting suffrage, and it is a discouraging commentary upon the insincerity and hypocrisy of many professed reformers that some of those who are now loudest in their advocacy of a change in election methods have been heretofore most active in debasing suffrage. Quick to discern the advantage which the adoption of the Australian system proper would give them in attaining their ends, and not content to accept merely those provisions which are designed to prevent bribery, fraud, intimidation and the improper use of money, and which all sincere and intelligent reformers agree upon, they are attempting to engraft upon our statute books those other features of the system which are properly applicable only in those States and countries whose constitutions and laws impose an educational qualification for suffrage. The Australian system in its entirety cannot exist where there is manhood suffrage without disfranchising those who cannot read or write. But feigning to remove this objection to the adoption of the entire system in this country, these disguised enemies of popular suffrage have introduced a provision for assistance to illiterates at the polls, either by friends of the illiterates who may be taken into the voting booth, or by sworn election officers. Either form of assistance would destroy the secrecy of the ballot and open the way to fraud, intimidation and corruption; but more than this, it would practically disfranchise thousands of voters. That will inevitably be the result — differing only in degree — whether the whole Australian system be adopted or this particular modification of it. With unprecedented boldness, a bill embodying this particular modification has been introduced in the House of Representatives and seems to find general support among the leaders of the party now in control of the national government, whereby federal elections are sought to be brought under the application of this dangerous innovation upon our methods. Its practical effect, if enacted, would be to deny fair expression of their choice to hundreds of thousands of electors now enjoying the right of franchise. It would impose upon partisan election officers, appointed by federal judges whose tenure of office is for life, a power such as never should be given to individuals under a democratic form of government, and which would be sufficient, if improperly used, to make our elections the triumph of an unscrupulous minority. In the southern States, where the proportion of illiteracy is greatest, it would subject more than a million of ignorant negro voters to the absolute mercy of federal officers. A more outrageous attempt to limit suffrage or to coerce the ignorant elector was never made in a democratic government. I am proud to observe that the party to which I belong has been quick to protest against and oppose this insidious scheme in Congress. Yet, on a larger scale, it is only the same iniquitous design which the enemies of universal suffrage have sought, by the passage of the bill now before me, to establish in our own State, where, according to the last census, there were 81,000 men of voting age who could not read or write. Eliminate its restrictive and disfranchising features and the bill would be no less an efficient remedy for existing evils at the polls. To insist upon their retention is to confess that the limitation, not the purity, of the ballot is the chief object sought by such legislation. I believe in the maintenance of manhood suffrage, and so long as I have a voice in the administration of government I shall never knowingly give my assent to any bill the effect of which is to disfranchise a single honest voter, no matter how humble or unlettered he may be, upon whom the Constitution confers the right of suffrage."

The bill was not passed over the veto.

April 1. To the Assembly:

Veto of a bill entitled "An act to amend chapter 229 of the Laws of 1879, entitled 'An act in reference to the collection of taxes in the counties of Chautauqua and Cattaraugus.'"

"*First*. Upon its merits, the bill is objectionable. Its purpose is to enact a short statute of limitations of eighteen months for actions or proceedings to recover lands sold for unpaid taxes in the two counties named. This purpose is accomplished by providing that all such tax deeds shall, after eighteen months from the recording thereof, be conclusive evidence of the regularity of all the previous proceedings from the assessment of the tax to the recording of the deed, both inclusive. The bill goes still further and makes the deed of the grantee of the county treasurer to a subsequent grantee, after eighteen months from the recording thereof, conclusive evidence of the regularity of the execution and acknowledgment and recording of both deeds.

The present law provides that such tax deeds shall, upon their execution, be presumptive evidence of the regularity of the previous proceedings, and shall be conclusive evidence of such regularity only after fifteen years from their execution. The change from fifteen years to eighteen months is very radical. The general law makes tax deeds by the Comptroller conclusive evidence only after two years from the recording. This period provided by the general law is very short, and it ought not to be reduced by any special legislation.

Second. The second section of the bill is so defectively drafted as to be unintelligible. It reads: 'The provisions of this act * * * shall not affect any action, proceeding or application which may be pending at the time of its passage, which action, proceeding or application may be legal and legally sanctioned and provided and which may be brought to vacate any tax sale,' etc.

Third. The act sought to be amended by this bill is one of fourteen different special laws providing in the same general way, but with almost infinite variety of detail, for sales of lands for unpaid taxes by county treasurers or other local officers in fifteen different counties, instead of by the Comptroller as provided by the general law. At every session of the Legislature for a number of years prior to 1889 various amendments have been made to these various special laws. In my veto messages of 1889 of Senate bill No. 170 and Assembly bill No. 566 (see Public Papers of 1889, pp. 123–7*), I urged that these various special laws should all be repealed, and that a general law should be enacted in their place, adopting a uniform system for all counties similarly situated. I have since refused to approve all amendments proposed to any of these special laws. The reasons for this course are more fully given in the veto messages referred to."

The bill was not passed over the veto.

April 3. To the Assembly: Transmitting the annual report of the Sailors' Snug Harbor.

April 14. To the Assembly:

Veto of a bill entitled "An act to amend chapter 583 of the Laws of 1888, entitled 'An act to revise and combine in a single act all existing special and local laws affecting public interests in the city of Brooklyn,' as amended by chapter 360 of the Laws of 1889."

"This bill is based upon a bad principle. It proposes to add four more dispensaries to the thirty-six medical institutions in the city of Brooklyn which shall receive moneys annually out of the city's tax levy. Six new institutions were added to the list last year, and should the present bill become a law encouragement would thereby be given to similar legislation in each succeeding year. The bill gives to the city authorities no option in the premises, but compels them, whether in accordance with their judgment or against it, to appropriate annually five thousand dollars for the use of these dispensaries, upon the consideration merely that the latter shall furnish medical and surgical aid and treatment to the poor of Brooklyn who may apply therefor. I approved the act of last year, but I cannot conscientiously affix my signature to this.

**Ante*, pp. 749, 754.

A succession of such acts should not be encouraged. The Legislature cannot be so good a judge of the desirability of such legislation as are the local authorities. Yet the mayor, the comptroller and the common council have no voice in this matter; the provisions of the bill are mandatory. The people of Brooklyn are taxed for a questionable purpose by an inappropriate and unrepresentative body. Although the amount is not large, the principle is opposed to the theory of home rule, and should be discouraged. There is reason for believing that previous legislation of this kind has been abused, in that essentially private institutions have been made beneficiaries of public funds. That is a natural consequence where taxation is forced against the consent of the taxpayers or their directly responsible officers. It has been customary to allow bills like these to become laws, but so harmful is the tendency of such legislation that, in my judgment, it is time to begin a new departure."

The bill was not passed over the veto.

April 21. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 21, 1890.

"In my annual message submitted to you in January last, I suggested for your consideration the propriety of the adoption of the substantial features of what is known as the 'Corrupt Practices Act' of Great Britain, and expressly recommended that "each candidate and *the executive committee* of each political party should be required to publish an itemized verified statement of all the moneys expended by them in each campaign and the particular purposes of such expenditures.' [See note 9.]

The act which the Legislature subsequently passed upon this subject, being chapter 94 of the Laws of 1890, makes reasonably severe requirements with reference to the filing of itemized statements of expenditures by candidates, but fails to demand a similar obligation on the part of political agents or committeemen.

In a memorandum filed by me, approving this bill, I said: 'The whole measure, so far as it goes, is meritorious, and if enforced and sustained by an active, vigilant and enlightened public sentiment, is capable of accomplishing some practical and genuine reform.'

The initial operation of this measure at recent municipal elections has made it more clearly apparent that the act does not go far enough, and has demonstrated that its excellent provisions should be extended so as to include political committees and agents among those required to file statements of expenditures. Without such extension the practical benefit desired by the passage of the act in discouraging large contributions by candidates, will only be partially secured, as it has been lately shown that candidates, while formally complying with the new law, have, as a general rule, merely sworn that certain sums contributed by them have been paid over to the chairman or treasurer of their respective political committees for legitimate campaign expenses, but for what specific purposes the moneys thus given were expended were not disclosed, and the committees themselves are not required to render any account of moneys received or paid out.

The information thus actually furnished to the public is meagre and unsatisfactory and does not fully accomplish the desirable objects of the law. New York was the first State in the Union to adopt a 'Corrupt Practices Act,' and it should be equally prompt to remedy any defects or omissions which may be disclosed in its actual operation.

I desire, therefore, respectfully to call the attention of the Legislature to the weakness which an actual experiment of the new law has more clearly developed, and to suggest that the act be amended so as to meet the objection raised. I have caused to be prepared an amendment to the Penal Code, which is intended to strengthen and perfect the law and which I take pleasure in transmitting herewith. It has been carefully drawn, and would seem to be as strict in its requirements as the purpose of the statute demands. I heartily commend it to the consideration of the Legislature.

While it will be observed that the proposed act imposes no restriction upon the amount of money which candidates or other persons may contribute for political purposes, nevertheless I desire to suggest the advisability of some such limitation,—somewhat analogous to the provisions of the English act. This would involve the establishment of a scale of amounts properly graded, which shall prescribe the maximum sum that a candidate for each office may contribute for the purposes of his election. Such a provision might also limit in some appropriate manner the amount of expenditures by committees and the subscriptions of contributors. [See note 9.]

DAVID B. HILL."

April 21. To the Assembly:

Veto of a bill entitled "An act to amend chapter 239 of the Laws of 1866, entitled 'An act to incorporate the Poughkeepsie Associated Fire Department of the city of Poughkeepsie.'" [30]

"A bill exactly similar in its provisions to this was passed at the last session of the Legislature and was vetoed by the Executive upon the ground that it exempted the real and personal property of the Poughkeepsie Associated Fire Department from taxation. If it is deemed wise by the Legislature that one such corporation should be exempted from paying taxes, the same privilege should be extended to all benevolent and charitable corporations.

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[30] The bill was not passed over the veto. By an act passed in 1891, chapter 163, the real property of "any incorporated association of present or former volunteer firemen" was exempted from taxation, not exceeding $15,000 in assessed value.

Laws exempting property from taxation should be general in character, and should operate equally throughout the State. This is a special bill, and I have for some years uniformly withheld my approval from measures of this kind."

April 21. To the Assembly:

Veto of a bill entitled "An act to amend section 2 of chapter 444 of the Laws of 1874, entitled 'An act to create a board of excise in the several towns of this State,' and the acts amendatory thereof."

"This bill is regarded as unnecessary at this time. It simply proposes a form of indorsement to be used upon excise ballots in the towns of the State. A general act relative to the form of ballots and the manner of voting is now pending in the Senate, with fair prospects, as I am advised, of its passage by the Legislature. The act seems to meet with general approbation, and if passed in its present shape will probably become a law, inasmuch as it has been freed from constitutional and other objections which heretofore have made similar measures obnoxious to a part of the Legislature and to the Executive.

In view of the strong assurance, therefore, of the enactment of this general law, the legislation intended by the bill before me would seem to be unnecessary. Under the general ballot reform bill, if enacted, the form of ballot would differ radically from the one here contemplated, and separate excise ballots would be abolished. The provisions of this bill would be void in that case, and its enactment at this time is consequently regarded as unwise. To permit it to become a law would probably be merely to add an unnecessary statute to the volume of legislation now rapidly accumulating."

The bill was not passed over the veto.

April 21. To the Assembly:

Veto of a bill entitled "An act to authorize the Groton Cemetery Association, located in the town of Groton, Tompkins county, New York, to change its corporate name."[31]

"The chief provision in this bill seems to be, as indicated in the title, to authorize the Groton Cemetery Association to change its name to 'The Groton Rural Cemetery Association.' If this is the purpose of the measure, it may be accomplished under chapter 280 of the Laws of 1876, without any additional legislation. This general act was framed to remove the necessity for such special legislation as is here proposed, and the attention of the Legislature is again directed to its provisions.

As to the bill's remaining provisions, they are either entirely unnecessary legislation or their wording is so defective as not clearly to indicate their purpose."

April 22. To the Assembly:

Veto of a bill entitled "An act to amend chapter 501 of the Laws of 1887, entitled 'An act for the incorporation of the Young Men's Christian Associations.'"

"This bill is a duplicate of Senate bill No. 172, which was approved by me on the eleventh of this month and now constitutes chapter 104 of the Laws of this year. The passage of this bill again by the Legislature is an evident inadvertence, due, probably, to the fact of its contemporaneous introduction in both houses."

The bill was not passed over the veto.

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[31] This bill was not passed over the veto, but another bill was passed, chapter 377, which ratified and legalized certain transactions by and with the Groton Rural Cemetery Association, and which were declared to be of the same effect as if the original name — Groton Cemetery Association — had been used.

April 22. To the Assembly:

Veto of a bill entitled "An act to authorize the supervisor, justices of the peace and town clerk of the town of Flatlands, in the county of Kings, to license and regulate all public hacks, vehicles, venders, shows, concerts and public amusements in said town of Flatlands."

"The object of this bill is to give the town government of the town of Flatlands certain powers which properly belong to village or city government. Although such a policy is not without precedent, it is respectfully submitted that the precedent ought no longer to be followed. If a town has developed such a population as to require the powers of a village or city, it should incorporate as a village under the general laws or be incorporated as a city by an express act of the Legislature."

The bill was not passed over the veto.

April 22. To the Assembly:

Veto of a bill entitled "An act to further amend section 21 of chapter 534 of the Laws of 1879, entitled 'An act for the preservation of moose, wild deer, birds, fish and other game,' as amended by chapter 619 of the Laws of 1887."

"This bill adds Brant Lake, in Warren county, to the list of waters in which the killing or catching of black bass is forbidden between the first day of January and the first day of July. Since the bill was introduced the Legislature has passed, and the Executive has approved, a measure which provides for the revision and codification of the laws for the protection and preservation of fish and shellfish, and of birds and quadrupeds. In view of the work contemplated by this statute, it would seem unwise at present to modify, unnecessarily, existing laws pertaining to this subject.

The commission created under the statute above referred to is compelled to make its report in January next, until which time the legislation herein proposed can easily be deferred. The bill is, therefore, returned without approval."

The bill was not passed over the veto.

April 22. To the Assembly:

Veto of a bill entitled "An act to amend section 24 of chapter 534 of the Laws of 1879, entitled 'An act for the preservation of moose, wild deer, birds, fish and other game,' as amended by chapter 11 of the Laws of 1886."

"This bill is disapproved for the same reasons that I have given in my message vetoing Assembly bill No. 556, to which the attention of the Legislature is respectfully directed."

The bill was not passed over the veto.

April 24. To the Assembly:

Veto of a bill entitled "An act to legalize and confirm the action of the special committee of the Assembly of 1887, in certain cases, and to authorize the Board of Claims to hear, audit and determine the claims of Matthew J. Myers against the State for services and disbursements, and to make an award therefor."

"There is no very serious objection to that portion of this bill which legalizes the act of the special committee of the Assembly of 1887 in employing the claimant. If that part of it stood alone, I should be inclined to permit the measure to become a law. But the second portion of the bill which authorizes the claimant to file a claim with the Board of Claims, although two years have elapsed since it ostensibly accrued, is of questionable propriety.

Special bills of this character are becoming so frequent that a necessity arises that some definite policy in regard to the short statute of limitations imposed by the General

Claim Act should be adopted. There is little use of any such statute if the Legislature in every case that may be presented to it waives the statute and allows a claim to be presented at any time.

I am advised that a general bill is now pending in the Legislature fixing the statute of limitations in such cases at six years, and until the disposition of that bill has been determined it seems unwise to pass upon these special bills. I have, therefore, concluded to withhold my approval from such bills at present until the policy of the Legislature shall have been more fully determined.[32]

An opportunity for the recall of this bill to await the disposition of the general bill was afforded, but it was not improved,''

The bill was not passed over the veto.

April 28. To the Assembly:

Veto of a bill entitled "An act to authorize the board of education of school district number five in the town of Oyster Bay, in Queens county, to purchase grounds and erect a new school-house in the said district, and borrow money for the said purpose." [33]

'' The purpose of the bill seems entirely meritorious, but it belongs to a class of legislation which is usually deemed objectionable. The district referred to is operating under a special law, being chapter 573 of the Laws of 1857. But for this special act the district would have authority under the general statutes to do precisely what it is authorized to do by this bill. It is possible that a bill similar to the provisions of this one has been permitted to become a law during this session, but the frequency of these acts renders it necessary that they should not hereafter be sanctioned. The Superintendent of Public Instruction has drafted a bill amending the general statutes so as to provide for cases like this which authorizes districts situated as this one is to accomplish what this bill now seeks to do, notwithstanding the special statute under which it is operating. This general measure seems likely to reach the Executive Chamber, and if it should become a law, would render this bill wholly unnecessary. In any event it ought not to receive Executive approval, as it would furnish a precedent for future legislation of the same kind."

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[32] The bill referred to by the Governor was not passed. The period of limitation was fixed at two years in the act creating the Board of Claims, L. 1883, chapter 205, and was continued by the act of 1897, chapter 36, changing the Board to a Court, and including the provisions relating to it in the Code of Civil Procedure.

[33] The bill was not passed over the veto, but the relief sought by it was afforded by a bill, which became chapter 548, approved June 7, amending the common school law of 1864, chapter 555, by applying to school districts created by special law, the provisions relative to the purchase of sites and the erection of school-houses.

April 28. To the Assembly:

Veto of a bill entitled "An act to amend and revise chapter 55 of the Laws of 1881, entitled 'An act in relation to the public schools in the city of Hudson, and to create a board of education for said city.'"

"The clause in the bill which reads as follows, 'And all their [members of board of education] official acts and proceedings taken or had by them heretofore shall be held and adjudged in all respects valid and binding upon all the parties thereto,' is regarded as objectionable.

A general legalization of all the acts and proceedings of an official body is highly improper. The particular acts or omissions sought to be confirmed should be specified in order that the bill upon its face may show the extent and nature of the legalization. It is usual to legalize technical errors, but intentional departures from statutes and gross misconduct should not be approved. It is impossible to determine from this bill what acts are desired to be sanctioned, as the bill carefully conceals them.

But there is another more serious objection to this measure. An amendment was inserted in the bill in the Senate which virtually destroys one of the objects of the bill, which was to give to the common council as well as the board of education, additional moneys deemed absolutely necessary for the proper conduct of the city government. The amendment does not affect the allowance to the board of education, but does restrict the amount intended to be placed at the disposal of the common council, and its effect will be not to aid but to embarrass the city government. No good reason has been suggested why the amendment should have been interpolated in the Senate. It is not in the interest of economy, as it seems to have been conceded that the bill in its original shape was imperatively demanded by the best interests of the city, and it is difficult to resist the conclusion that its object was what its effect would be, to wit: to cripple the present officers of the city government in their efforts to properly administer the city affairs.

The original bill was agreed to by all parties and was believed to be entirely satisfactory. The amendment was not asked for by the local authorities, and it was inserted without their knowledge or consent. They are opposed to the bill in its present shape, and their views, in my judgment, should be permitted to prevail.''

The bill was not passed over the veto.

April 28. To the Assembly:

Veto of a bill entitled "An act to confer on the board of supervisors of Erie county authority to protect ducks and fish in all the waters within the territorial jurisdiction of said county, except Niagara river."

'' This bill is disapproved for substantially the same reasons that I have given in my message vetoing Assembly bill No. 556, entitled 'An act to further amend section 21 of chapter 534 of the Laws of 1879, entitled 'An act for the preservation of moose, wild deer, birds, fish and other game, as amended by chapter 619 of the Laws of 1887," transmitted to the Assembly, April 22, 1890, to which the attention of the Legislature is again respectfully directed."

The bill was not passed over the veto.

April 28. To the Assembly: Transmitting the annual report of pardons, reprieves and commutations.

April 29. To the Assembly:

Veto of a bill entitled "An act to grant and release the right, title, interest and estate of the people of the State of New York, acquired by escheat, in and to certain lands and tenements situate in the city of New York, to Richard M. Bruno, his heirs and assigns." [34]

"A general bill authorizing the Commissioners of the Land Office to release escheated lands in certain cases has passed the Senate unanimously and is now awaiting the action of the Assembly. Such a general bill clearly covers the case for which this special bill is intended to provide, and if it shall become a law this bill will be unnecessary."

April 29. To the Assembly:

Veto of a bill entitled "An act to amend section 1 of chapter 165 of the Laws of 1826, entitled 'An act to incorporate the Union Literary Society of Ellisburgh.'"

"The principal object of this bill seems to be to change the name of the corporation. This object can be accomplished under general laws without the necessity of special legislation."

The bill was not passed over the veto.

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[34] The bill was not passed over the veto. A general escheat law was passed at this session, chapter 279, which provided for a petition to the Commissioners of the Land Office for the grant of escheated lands, and authorized the Commissioners to convey the land on compliance with the statute. The subject was afterward included in the public lands laws, L. 1894, chapter 317.

April 29. To the Assembly:

Veto of a bill entitled "An act to amend section 518 of the Code of Criminal Procedure, in relation to appeals by the people in criminal cases."

"This bill allows an appeal to be taken by the people in criminal cases from an order granting a new trial upon the ground of surprise or newly-discovered evidence. The exercise of the power to grant a new trial to a prisoner in such cases is largely discretionary and is not likely to be abused. The right to appeal by the people in such cases has not heretofore existed, and it does not appear that any evils have resulted therefrom.

Frequent changes in the criminal law should be avoided and the judges of our courts do not seem inclined to favor the innovation proposed by this bill."

The bill was not passed over the veto.

April 30. To the Assembly:

Veto of a bill entitled "An act to amend chapter 553 of the Laws of 1885, entitled 'An act to incorporate the Citizens' Loan Agency and Guarantee Company,' and to change the name thereof."

"Whatever is the purpose of this bill, the result of its enactment would be virtually the incorporation of a trust company with much wider powers than are given to such companies organized under the general law. The bill, on its face, assumes to change the name of the Citizens' Loan Agency and Guarantee Company to the 'American Investors' Corporation,' to increase the capital stock, to enable it to issue preferred stock, and to correct an alleged ambiguity in the original act of incorporation relative to the amount of stock which shall be paid in before commencing business. The first of these objects may be secured under chapter 518 of the Laws of 1887, and the remaining objects under other existing laws. There is no necessity, therefore, for the legislation here proposed.

But besides this, the effect of the bill's enactment would be to revive a corporation now defunct. The company was organized under chapter 553 of the Laws of 1885, but failed to comply with the requirements of that act, and therefore became inoperative. An unimportant amendment in chapter 335 of the Laws of 1888 to the act of incorporation may have revived the company's charter temporarily, but more than a year having elapsed since this revival the charter has again become inoperative. The principal effect of the proposed legislation, therefore, would be the second resuscitation of the company and its endowment with increased powers. This would be manifestly unjust to such companies as have been organized under the general law since its passage, and would establish an unwise precedent in legislation. Similar bills, whose purpose is to galvanize defunct companies by evasive legislation, have uniformly been disapproved by the Executive when their purpose was discerned."

The bill was not passed over the veto.

May 5. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *May* 5, 1890.

"Recent arbitrary acts of partisan majorities, both in Congress and in various State Legislatures, have induced me to suggest to your honorable body whether a radical change is not advisable in our constitutional methods of determining contested elections.[35]

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[35] A constitutional amendment was adopted by the Legislature of 1891, adding to section 10 of article 3 a provision transferring from the Legislature to the courts power to determine disputed elections of members of either house. The amendment was again adopted by the Legislature in 1892 and submitted to the people, but was rejected at the November election in that year by a vote of 174,678, to 180,030, an adverse majority of 5,352.

In a country where there are so many elective offices it is not surprising that there should be many disputes over the question of title to office, and the story of the adjudication of the claims of rival candidates forms no unimportant feature of our jurisprudence and our political history. The interesting fact is presented, however, that, in our century and more of political life, we have built up two radically differing systems of determining contested elections — one applying to contests for all executive, administrative and judicial offices, and the other applying only to legislative offices. For the determination of the former we depend upon the machinery of the courts, as we properly should; but for the determination of the latter we have invested our legislative bodies with a judicial power in that provision of our constitutions which makes each house the judge of the returns, qualifications and elections of its own members.* This assignment to the Legislature of certain purely judicial functions seems to have been accepted without question from English precedent at the time of the framing of our Federal and State Constitutions; but so often has the legislative power thus conferred been abused, and so strong seems the tendency with increasing years to abuse it, that the question is submitted as well worth considering, whether grave dangers do not threaten us in its retention.

The history of the exercise of this power in the House of Commons is instructive in the light which it throws upon the affirmation of the same principle in American constitutions, and in the results which followed its affirmation in England. When in the reign of Edward III the formal separation of parliament into two branches took place, the House of Commons was a comparatively feeble body, not jealous or even conscious of the rights and privileges which it afterward claimed and secured, and disputed elections, if there were any, were probably decided by the crown or by judicial officers in sympathy with the crown. As the commons, however, became more powerful and assertive, and occupied an attitude more or less hostile to the crown, the house claimed the privilege of being the judge of the elections of its own members. The privilege was exercised to some extent during the reign of Elizabeth, but its exercise seems to have been seriously impaired by the assumption of the jurisdiction by the Court of Chancery. It was proclaimed with great vigor a little later, however, in the declaration of privileges which Francis Bacon and others of a select committee on the part of the house addressed to James I. 'And lastly,' says this bold declaration, 'we avouch that the House of Commons is the sole proper judge of the returns of all such writs and of the election of all such members as belong unto it (without which the freedom of election were not entire), and that the Chancery, though as a standing court under your Majesty, but to send out those writs and receive the returns, and to preserve them; yet the same is done only for the use of the Parliament, over which neither the Chancery, nor any other court ever had or ought to have any manner of jurisdiction.'

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* Const. 1846, art. 3, § 10; U. S. Const. art. 1, § 5, clause 1.

Gradually this right became firmly established and was no longer disputed. It was constantly exercised until 1868, when it was voluntarily relinquished in the interest of justice and good government. This transfer of jurisdiction to the courts was brought about by the frequency of scandals and by exhibitions of perverted partisanship which made the former system of adjudication a mockery of justice. The abuse of the privilege which had so long been enjoyed had grown so serious by 1770 that it led to the adoption of what was known as the Grenville act, which made a committee of eleven — chosen by lot from the members of the house — the arbiter of all disputed claims to membership. This device gave general satisfaction, and it is said that a marked difference thereafter in the quality of decisions was noticeable. After a time, however, the new system was complained of on the ground that it did not prevent partiality, and in 1839 the method of choosing the members of the elections committee was modified so as to secure more competent men and a fairer tribunal. Even this did not give satisfaction, and in 1868, as mentioned above, the house seized the heroic remedy, gave up the privilege which had been its pride for centuries, and turned over the determination of these really judicial questions to the courts. Election petitions are now tried by two judges of the Queen's Bench Division of the High Court of Justice, whose report of findings to the speaker of the house is practically final.

At the time that American constitutions were framed, after English models, English experience had shown how easily the privilege of deciding election contests could be abused in a legislative body, but the advisability of relinquishing that jurisdiction had not been suggested. Consequently our own constitution makers seem not to have doubted at all the wisdom of reserving this ancient privilege to every legislative body. The Federal Constitution says: 'Each house shall be the judge of the elections, returns and qualifications of its own members.'[f] Virtually the same provision was contained in Pinckney's draft of a constitution submitted to the convention of 1787 and in Hamilton's; and so far as it relates to the elections of members I cannot find that it was discussed either in the federal convention or in the State ratifying conventions. It seems entirely to have escaped comment, which, under the circumstances, is not, perhaps, remarkable. The first Constitution of this State provided that both Senate and Assembly should 'be judges of their own members;'[g] and the same power, though in different language, has been conferred upon the Legislature without question in all succeeding modifications of our organic law. In our present Constitution the provision is almost exactly similar to that in the Federal Constitution, namely, that each house shall 'be the judge of the elections, returns and qualifications of its own members.'[b]

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[f] U. S. Const. art. 1, § 5, clause 1.

[g] Const. 1777, §§ 9, 12.

The fact of general acquiescence, however, for a long period, in the principle of jurisdiction here involved is not, of course, to be taken as a reason for its perpetual maintenance. As a matter of fact, it not only is not in harmony with our cardinal American idea of the distinct separation of the legislative, judicial and executive departments of government, vesting, as it does, each branch of the Legislature with judicial functions, but it has led to tyrannical abuses of power. Worthy of maintenance as this ancient privilege was regarded in times when the crown assumed prerogatives which rightly belonged to the representatives of the people, there is no longer any excuse for its retention in legislative bodies when a state or a nation has an elective, stable and independent judiciary. Experience in this State and the national government during the last twenty-five years has been sufficient to warn us of the evils which threaten in the continued reckless exercise of this power. We appear to be tending in the same direction in which England was tending when scandals forced the House of Commons to surrender its privilege of three centuries. Contested elections are apparently decided by might — not by right. There is no popular confidence in the judgments of the tribunals which determine them. Legislative bodies, in their judicial capacity, are a law unto themselves; they are governed by no established rules of evidence, are influenced mainly by partisan considerations, and are controlled largely by the result of party caucus or conference. Their collection of testimony through committees is often virtually *ex parte* in its nature, its discussion is violently partisan, and the decisions are not reviewable by any higher tribunal. Under these conditions, which prevail generally and are not exaggerated, justice is impossible. Reliable authority estimates that four-fifths of all the contested elections to congress are decided in favor of the dominant party. Minority representatives, with honest claims to the title of their office, are ousted upon flimsy pretexts in order to increase the power of the majority. No more vivid illustration of the abuse of a great privilege and responsibility is needed than the spectacle which has been presented at Washington since the assembling of the Fifty-first Congress. The certificates of seventeen members of the House of Representatives are contested, in nearly all instances by candidates of the party which controlled the house at its organization, and apparently in pursuance of a prearranged programme of party leaders for the purpose of increasing the slender majority by which the popular branch of the federal legislature is controlled. In most of the cases the claims of the contestants are artificial and insignificant upon their face, yet they seem to serve well the purpose for which they were made, and one after another of the minority members is unseated to make room for a member of the majority. To facilitate this political process the majority went even so far as to prevent for the space of three months the adoption of any rules for the guidance of the house, lest by rights usually thus reserved to the minority the majority should be checked in its efforts for power. If further illustration is needed that justice has been banished from the halls of legislation when disputed elections are under consideration, it is found in the equally arbitrary conduct of the United States Senate in seating the two applicants who, according to all fair precedent, did not hold proper credentials as senators from the new State of Montana. By no rule of equity could so partisan a decision be arrived at, and its rendering shows to what extent political feeling has warped the judgment of even this dignified and conservative body.

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[b] Const. 1846, art. 3, § 10.

The remedy for such abuses is, I believe, substantially that which was tried in Great Britain, and which is said to have proved exceedingly efficacious in abolishing the evils that led to its adoption. I, therefore, suggest the passage of a concurrent resolution submitting to the people an amendment to our State Constitution which will take from each house the power of judging its own elections and confer the jurisdiction upon the courts. I would go even further and recommend such action on the part of the Legislature as is likely to bring the subject to the attention of Congress, with a view to securing ultimately a similar amendment to the Federal Constitution.

I need not describe the details of such a proposed change. Under such a modified system of adjudication contests for legislative offices would be placed upon the same plane with contests for other offices which are now taken into the courts by the familiar process of *quo warranto,* and are decided, as a rule, upon their merits. There is nothing revolutionary or complicated about such a transfer. The candidate receiving the proper certificate of his election from the canvassing officers should be permitted to occupy his seat until he is duly ousted by the judgment of a competent court. This would compel contests to be decided upon their merits and relieve legislative bodies from the standing temptation to do injustice. It would render a certificate of election of some value and protect a sitting member from hasty and arbitrary partisan action. A statute should follow such a constitutional amendment, regulating the procedure in such cases and providing for a speedy and somewhat summary disposition thereof. The people have great respect for our courts, and the latter can safely be trusted to exercise properly the power which it is proposed to confer upon them. The effect will be undoubtedly to discourage contests, while the system now in vogue directly encourages them. Notwithstanding the great number of elective offices in the State, contests for which are under the jurisdiction of the courts, there is not, I am informed, a single *quo warranto* proceeding of any consequence at present pending — a significant commentary upon the popular respect which our judiciary system commands. Invest it with the responsibility also of determining legislative contests, and, in my opinion, the same good results will follow, while at the same time our legislatures will be relieved of the reproach of becoming merely partisan tribunals.

In directing your attention to this subject I desire, even at this stage of the legislative session, to recommend this transfer of jurisdiction, feeling confident that our legislatures must seriously consider it in the near future, and earnestly trusting that our own State may take the lead in bringing about such a wholesome constitutional reform. [See note 35.]

DAVID B. HILL."

May 5. To the Assembly:

"Herewith is transmitted a statement of item of appropriation objected to and not approved, contained in Assembly bill, chap. 295, entitled 'An act making appropriations for certain expenses of government and supplying deficiencies in former appropriations.'

'For the incidental and traveling expenses of committees of the Senate and Assembly of eighteen hundred and ninety, which have been or may be authorized by resolution of their respective houses to conduct investigations, five thousand dollars.'

This item is objected to and not approved.

It will be observed that no particular committees are specified for which this appropriation is desired, but it is intended for any and all committees 'which may have been or *may be* authorized ' to conduct investigations. This is altogether too general. There is a manifest impropriety in the Executive approving appropriations for the ' traveling ' and other expenses of investigating committees not yet appointed, and of the purposes and objects of whose appointment, whether meritorious or otherwise, he can have no knowledge. I must respectfully decline to act in the dark in regard to such matters. It is possible that it may be contemplated that one or more of such committees should sit during the coming summer. The taxpayers, by reason of gross abuses in the past, are naturally suspicious of the usefulness of ' junketing ' committees (so-called) who travel around at the public expense during the recess of the Legislature, and I am convinced that the well-known sentiments of the people in opposition to such expenditures should be respected.

There are several other items of appropriation contained in this bill which do not commend themselves to my judgment and from which I have withheld my approval in other years. The Legislature, notwithstanding such previous action on my part, having seen fit to renew such appropriations this year, I have not considered it my duty to again interpose my veto. The question of the expenditure of public moneys is one largely addressed to the discretion of the Legislature, and except in those years where it has been apparent that such discretion has been abused, the Executive has not ordinarily felt constrained to interfere, especially where no essential principle has been violated. Where the propriety of appropriations is simply doubtful, without any claim that the moneys will be wasted or misapplied, there is presented a mere difference of opinion, and a second interposition of Executive disapproval is not demanded in such cases, even in the interests of the most rigid economy.

In view of these considerations, I have concluded not to formally approve the bill as a whole, but while vetoing one item to permit all the others to become a law without my signature.''

The item was not passed over the veto.

May 6. To the Assembly:

Veto of a bill entitled "An act to amend chapter 204 of the Laws of 1864, entitled 'An act to amend and consolidate the several acts relating to the village of Lansingburgh, and acts amendatory thereof.'"

"The amendments confer an unusual power upon the trustees of the village, to wit, the power to create new wards. That power has generally been reserved to the Legislature itself, and it does not seem proper to confer it upon the trustees of villages. The trustees may appropriately be trusted to erect new election districts, but the creation of new wards is a matter of sufficient importance that it may with propriety be left to the Legislature. The amendments seem to take away from property owners one of the rights usually enjoyed by them, viz., the right to lay down and repair the sidewalks and gutters in front of their respective premises. A fair construction of the amendments requires that the work shall be performed exclusively by the officials of the village, and affords no opportunity to the owners themselves to lay down or repair the sidewalks or gutters. That privilege ought not to be denied them.

The bill contains other amendments, the propriety of which may well be regarded as doubtful. A new office, known as a 'village engineer,' is created, which many large taxpayers of the village regarded as an unnecessary office, and which, it must be conceded, has not generally been provided for in village charters.

It is not necessary to specify other objections which have been presented to the measure. There does not seem to be any especial sentiment in favor of the bill in Lansingburgh, and no particular harm can result if the whole bill stands over another year. It can then be more carefully perfected, and will undoubtedly more fully represent the wishes of the taxpayers."

The bill was not passed over the veto.

May 8. To the Senate:

Veto of a bill entitled "An act to amend chapter 300 of the Laws of 1875, entitled 'An act providing that the bridge in course of construction over the East river, between the cities of New York and Brooklyn, by the New York Bridge Company, shall be a public work of the cities of New York and Brooklyn, and for the dissolution of said company and the completion and management of said bridge by the said cities.'"

"The object of this bill is to regulate the compensation of the Brooklyn bridge policemen. By the law now in force the compensation of the bridge police force is fixed by the bridge trustees, and is wholly within their discretion without minimum or maximum limit. This bill provides that 'the compensation of said policemen shall be not less than eleven hundred dollars per annum.'

From such information as I have it would seem that the sum named in this bill is no more than ought to be paid for the services rendered, but I have repeatedly insisted that the local boards, and not the Legislature, should fix the compensation to be paid their employes at such rates as they should think proper, and as may be mutually agreed upon between them and their employers. This is the first principle of the doctrine of home rule. I quote from my veto message of a Senate bill of last year (Public Papers of 1889, at p. 212), to show that I cannot consistently depart from the application of this salutary doctrine in this case, as follows:*

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* *Ante*, p. 826.

'In the second place the salaries of subordinate officials of municipalities, such as policemen, firemen, teachers, clerks, and other similar employes usually appointed by and under the control of a department already having power to regulate the compensation which they should receive, should not be arbitrarily increased by the Legislature, but the power or authority only to make such increase should be conferred upon such board or other proper local authorities within certain defined limits.

'It was upon these grounds that certain vetoes were based, which appear at pages 112 and 113 of my Public Papers of 1886, and at pages 52 and 53 of my Public Papers of 1888.'

I regret that worthy men should not be properly compensated for their services; but if such be the case, the local authorities properly intrusted with the duty of adjusting the compensation, must be held to responsibility for any injustice in their action, and appeals for remedy should be addressed to them rather than to the Legislature."

The bill was not passed over the veto.

May 8. To the Senate:

Veto of a bill entitled "An act to amend chapter 95 of the Laws of 1881, entitled 'An act to amend chapter 335 of the Laws of 1868, entitled "An act to incorporate the city of Ogdensburg," and the acts amending the same,' as amended by chapter 397 of the Laws of 1885, and to create a board of commissioners of public works for said city, and to borrow money to improve the streets of said city."

"The most important amendment contained in this bill is that which creates a board of commissioners of public works. Six persons are specifically named in the bill who are to constitute such commissioners, and their terms of office are also fixed therein.

There is no objection personally to the citizens selected. Three of them are from each political party and they are eminently qualified for the positions for which they are named. But my objection to this portion of the bill is based upon principle, and not upon the *personnel* of the commission itself. It is a distinct violation of the doctrine of home rule. Six officials are legislated into office, without any action on the part of the local authorities. The mayor and common council and all the other officials of the city, who were duly elected by the people, are entirely ignored. The Legislature at Albany assumes to dictate who shall be certain officials of Ogdensburg for several years to come. Instead of permitting the taxpayers and citizens of that city to have a voice as to what persons shall administer some of the most important functions of the city government, the Legislature grasps the responsibility of arbitrarily making them.

Such a course is in violation of the principle of local self government. The local authorities should make these appointments, or else the people should elect such officials. There is no question of politics involved. The mayor and a majority of the common council are of the same political faith. But I insist as strenuously upon the rights of a republican mayor and other republican local authorities of Ogdensburg as I do for the rights of a democratic mayor and democratic local authorities of New York city. The same principle is involved. I am opposed to the effort which is continually being made to deprive municipalities of their just rights.

I care not whether the commissioners of public works are named by the mayor or named by the common council, or whether nominated by the mayor and confirmed by the council, but I am clear in my convictions that they should not be selected by the Legislature.

There must be a most singular state of affairs in Ogdensburg if the citizens of that city are unwilling to trust their own elected officials, but prefer to delegate the power of the selection of six important officials to their representatives in the Legislature.

But, irrespective of local sentiments or wishes, the principle contained in this bill is a bad one and I cannot consistently permit it to become a law. I am satisfied that my position upon this question is sound and I cannot recede from it.

The Constitution declares as follows:

'All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose.'[1]

While it may be claimed that this provision does not expressly apply to such officers as 'Commissioners of Public Works,' because offices of that particular nature were not known at the time of its adoption, yet, nevertheless, the *spirit,* if not the strict letter of the Constitution, is violated. Whatever the technical construction of the Constitution may be, the policy which it declares as essential to good government should be followed.

I have requested the introducer of this bill in the Senate, and the immediate representative of Ogdensburg in the Assembly, to recall this bill and amend it by giving some local authority the power to name these officials, but they have declined so to do. There is, therefore, no other course left for me, except to withhold my approval from this measure, giving to the Legislature and the people my reasons therefor."

The bill was not passed over the veto.

May 9. The Legislature adjourned without day.

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[1] Const. 1846, art. 10, § 2.

MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

February 20.

Memorandum filed with Assembly bill, chap. 7, "World's Fair Bill." Approved. [See note 22.]

"The importance of this measure, the public attention which it has attracted and the prolonged struggle in the Legislature which preceded its passage, seem to render appropriate a statement of the questions involved and the dangers avoided in its enactment.

In a special message transmitted to the Legislature on the seventh instant, urging the passage of this measure, I took occasion to announce in advance that it would receive my approval. This course is conceded to have been unusual, but the public and beneficent character of the enterprise, the threatened injury to New York's chances at Washington by the circulation of false rumors as to my position, the necessity for prompt action and the exigencies of the situation, all justified a departure from customary executive procedure.

First. As to the merits.

The bill gives evidence of careful preparation and seems to be reasonably free from just criticism. The clause requiring a two-thirds vote of the incorporators upon the most important matters to be decided is not objectionable, and undoubtedly would have been conceded by the friends of the bill at any time during the contest had its desirability been suggested.

Second. As to the bill's constitutionality.

I have consulted with the Attorney-General and he advises me that the bill is constitutional. It is contended that the indebtedness proposed to be contracted may well be regarded as incurred for 'city purposes' within the fair intent and meaning of section 11 of article VIII of the Constitution. That provision should be liberally construed. The Legislature and the city of New York must be permitted to exercise a reasonable discretion and latitude in determining what are 'city purposes' within the true spirit of the Constitution. The expenditures authorized to be incurred are declared by the express provisions of the bill to be for the acquiring of lands and the erection of buildings thereon in the city 'for exhibitions of arts, sciences, manufactures and products of the soil, mine and sea, and to establish and maintain such exhibitions,' and it is further provided that 'the said lands and buildings and said exhibition shall be devoted to public use and to public instruction and healthful recreation.'

These are objects which unquestionably do not encounter any constitutional obstacle, and are those which, it has always been assumed, any city has a perfect right to undertake for the promotion of the public welfare.

Third. The measure does not violate the principle of 'Home Rule,' nor is it inconsistent with correct principles of legislation.

The commissioners designated in the bill are expressly declared therein to be those '*heretofore selected by the mayor of the city of New York.*' (See sec. 4.) This is a proper recognition of the principle that commissioners to carry out local improvements or to disburse the moneys of a municipality should be selected by the local authorities themselves, and not by the Legislature. I have for several years uniformly refused my approval of measures wherein this principle has been ignored. It is conceded that the present bill was prepared by a non-partisan committee of the citizens of New York city and approved by the local authorities of that city, and that the mayor officially selected the commissioners whose names are incorporated in the bill. The attempt to engraft additional incorporators upon the bill occasioned the three weeks' struggle which has finally resulted in the passage of the measure without the addition of any new names, and substantially as the bill was originally presented. The insertion by the Legislature of additional incorporators not appointed, suggested or desired either by the local authorities or the local citizens' committee would have rendered the measure specially objectionable and peculiarly offensive, and imperiled its final success. It confessedly would have violated a correct principle of legislation, which violation could not well have been sanctioned or overlooked, and would have afforded a precedent whereby other efforts to supersede or ignore local authorities might be attempted.

The enactment of this bill in its present form will not encourage endeavors to discover devices or to invent excuses upon which to justify the deprivation of municipalities of the right of local self-government, nor will it warrant the assumption by the Legislature of the prerogative of designating in a local bill the names of commissioners not suggested, desired or approved by local authorities, but in defiance of their proper rights and privileges.

Viewed in its true light, the passage of this measure may well be regarded, not as the triumph of any political party, but as a vindication of the salutary principle of 'Home Rule;' an enunciation of correct theories of legislation; a just rebuke to the importunate demands of perverted partisanship; a valuable contribution to the cause of progress, and as a tribute to the irresistible influence of an aroused and enlightened public sentiment.

March 4.

Memorandum filed with Assembly bill, chap. 16, authorizing the treasurer of Queens county to designate a deputy. Approved.[36]

"There is no general statute which authorizes the county treasurers of this State to appoint deputies. It would seem as though some such statute is desirable. As a general rule, it may be stated that special statutes ought not to be passed giving the treasurers of particular counties authority to appoint deputies and refusing the same privilege to the treasurers of other counties.

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[36] An act passed in 1905, chapter 276, conferred on county treasurers in counties containing a population of less than 50,000, power to appoint a deputy when authorized by a resolution of the board of supervisors. The compensation of the deputy was to be paid by the treasurer and was not to be a county charge.

It is conceded that this is special legislation. The necessity for the measure arises from the fact that the county treasurer of Queens county is now ill and is obliged to leave the country in search of health, and he expects to go away within the next two days. Much inconvenience and great hardship will ensue in case I refuse to approve this special measure. I am constrained to approve it by reason of the exigencies of the situation, but it must be understood that this bill shall not constitute a precedent for similar legislation in the future. A general bill should be passed to cover cases of this character." [See note 36.]

March 11.

Memorandum filed with Senate bill, chap. 37, for purchase of lands within the forest preserve. Approved.

" There is no objection to this act. The criticism which possibly may be urged against it is that it is good enough so far as it goes, but that it is wholly inadequate to meet the requirements of the situation.

It is not a broad and comprehensive measure providing for the establishment of an Adirondack park, such as is imperatively demanded by the best interests of the State, but it is simply a slight step in the right direction. The authority conferred is very inadequate; the amount appropriated is quite limited; the restrictions upon the prices to be paid are likely to produce unsatisfactory results; the provisions in regard to apportionment of lands are incomplete and somewhat unnecessary, and, in many other respects, the measure falls short of what it was hoped the Legislature might enact.

The bill must be regarded as a mere temporary expedient, and as such can do no harm, and, although it will not afford a proper and complete solution of the Adirondack park question, it encourages the hope that in the near future a more substantial and adequate measure may be passed to fully accomplish the objects recommended in my recent message to the Legislature relating to this subject.

I cheerfully approve the bill in the expectation that its enactment may lead to such a result."

March 18.

Memorandum filed with Senate bill, chap. 52, appropriations for Board of Claims awards. Approved.

"This bill reappropriates the sum of nearly fifty thousand dollars for the purpose of paying certain awards already made by the Board of Claims against the State. It also appropriates the additional sum of twenty-five thousand dollars for the purpose of liquidating any claims which may be made by the Board of Claims during the present calendar year, for claims other than those on account of the canals.

There is no objection to either item. The first item was contained in Assembly bill No. 567 of last year, which failed to receive my approval for the reason that there was attached to the appropriation portion of the bill a clause providing for the payment of interest by the State, not only on certain classes of claims to be awarded in the future, but on all of certain claims for which awards had been made by the Board of Claims since its organization. It actually reopened cases in which awards had been made for many years. This provision was regarded as specially objectionable, and it is estimated that if it had been approved it would have involved an additional expenditure or liability upon the part of the State of nearly one hundred thousand dollars. It was unwise *legislation,* improperly contained in an appropriation bill. The bill now having been stripped of these improper provisions, the same can, with propriety, be approved."

April 4.

Memorandum filed with Senate bill, chap. 94, the "Corrupt Practices Act." Approved. [See notes 8 and 9.]

"This bill is generally known as the 'Corrupt Practices' act. It illustrates what excellent legislation is possible where a sincere effort to serve the public good is manifested, rather than merely a desire to embarrass the Executive. The principal provisions of the measure were first recommended in my annual message a year ago, and were incorporated in the 'Linson' electoral reform bill of that year. Unfortunately for the public welfare, however, when proposed in the Legislature by the minority, they were rejected by a party vote. Their enactment was again urged in my annual message of the present year, and having afterward been inserted in this bill (Mr. Saxton's) they received a unanimous vote in both branches of the Legislature. It thus appears that the proposition which was rejected when presented by Mr. Linson, one of the minority, was adopted when put forward by Mr. Saxton, one of the majority.

The most valuable provisions of the bill consist of the prohibition of 'political pay-envelopes'—that device by which thousands of workingmen were intimidated in the recent presidential election—and the requirement that candidates for all offices shall file, within ten days after each election, verified statements in detail of their election expenses, in default of which they shall be deemed guilty of a misdemeanor, and the successful candidate shall forfeit his office. In my opinion this feature of the bill would have been considerably strengthened had the *quo warranto* provisions of the Linson bill been added, by which proceedings for ousting the successful candidate, in case of fraud, might be brought by the candidate receiving the next highest number of votes, without the necessity of a previous criminal conviction, provided it appeared that neither the contesting candidate, nor his political agents or committees, had used any corrupt means to promote his election. Juries will find a verdict in a civil action, the effect of which will oust a man from his office, without sending him to prison, when they would not convict him of a crime upon the same evidence. This, as I said in my recent annual message, would encourage prosecutions and put a premium upon honest candidacy. In England this feature is regarded as having accomplished more for the purification of elections than any other reform that has been tried.

The bill also embraces two other material features. It makes criminal offenses of a large number of improper practices affecting the purity of elections not covered by existing statutes, and contains definitions and broader descriptions of present offenses, so as better to secure their punishment. It also provides that any person convicted of bribery under the act shall, in addition to any other punishment prescribed therein, ' be excluded from the right of suffrage for a period of five years after such conviction.' This is a new and most important provision and may be productive of most excellent results.

The bill is accurate in form, amending, as it does, the Penal Code, which appropriately should embrace all legislation of this nature.

The whole measure, so far as it goes, is meritorious, and if enforced and sustained by an active, vigilant and enlightened public sentiment, is capable of accomplishing some practical and genuine reform. If all the alleged reform bills passed by the Legislature were as carefully and honestly framed and advocated as the one before me appears to have been, there would be less conflict between the Legislature and the Executive.

The measure is cheerfully approved."

April 24.

Memorandum filed with Assembly bill, chap. 183, providing for an additional engine-house in Utica. Approved.

"This bill is conceded to be special legislation, and such legislation is ordinarily objectionable where it is unnecessary or inappropriate.

I am inclined to agree with Mayor Goodwin, who refused to approve the resolution relating to this bill, upon the principal ground (aside from the question of economy involved) that a general bill, to wit, one amending the city charter, should be passed giving the local authorities of Utica power to erect engine-houses, whenever really needed, without special application to the Legislature. That objection seems to be well taken. But as the session is nearly closed and a general bill, such as suggested by the mayor, cannot now well be passed, it is deemed advisable that this bill should be approved in its present shape. This conclusion has been reached after consultation with Mayor Goodwin, who, after explanation of the condition of legislative business, concurs in the propriety of my action in approving this bill at this time."

April 29.

Memorandum filed with Assembly bill, chap. 218, regulating the pay of State laborers, which became a law without the Governor's approval.

"This bill is not formally approved. It becomes a law without my signature under the provisions of article IV, section 9 of the Constitution.

In the view which I feel compelled to take of the measure, it becomes unnecessary to consider the merits of the act proposed to be repealed. An emergency is presented which practically overshadows that question.

The Legislature of last year, which passed the original act, omitted to make the additional appropriation necessary to enforce its provisions. It enacted the law and then adjourned without providing the means to effectually carry it out. This occasioned a deficiency last year which must now be met. The Legislature now hastens to repeal the law, and provides for only a portion of the actual existing deficiency, and refuses to appropriate any additional sum required to carry out such a law. It is useless to have a law upon the statute books with no means to enforce it. Each year it becomes more difficult to secure from the Legislature the necessary appropriations absolutely required for the maintenance of our public works. The number of votes against *all* appropriations for the canals seems to be annually increasing, and while the Legislature is constituted as it is at present, it is idle to expect that any different course will be pursued than that which has been resolved upon. Any action of mine upon this bill will not change the existing anomalous situation. If I should veto the measure the canals would be obliged to cease operations about August next, as the usual appropriations therefor would be exhausted at that time, and the Legislature refuses to appropriate any additional sums. Instead of benefiting labor this course would throw all the employes on the canals out of work altogether.

This is the condition of affairs as it actually exists. Whether it was wise or unwise for the Legislature last year to regulate by statute the price of day wages for State laborers it is not now necessary to determine. There are probably two sides to that question, and it is not proposed to discuss either here.

The vital and important fact which now confronts us is, that moneys necessary to continue work upon the canals at the rates and under the conditions fixed in that bill are not forthcoming, and my refusal to permit this repeal bill to become a law would not relieve the difficulty, but only complicate the situation and embarrass all labor on and other interests of the public works of the State.

Under these circumstances, I have concluded to let the Legislature assume the full responsibility of the course which it has pursued, and not interpose a veto where its effect might be to cause the stoppage of all work upon the canals in the near future."

May 2.

Memorandum filed with Senate bill, chap. 262, the Ballot Reform Act. Approved.

"The people of the State are to be congratulated on having at last secured the enactment of a reasonable and constitutional electoral reform law.

The bill received the unanimous support of each branch of the Legislature, and apparently reflects faithfully the demands of public sentiment.

It is not claimed that it is a perfect measure. It must be conceded that it contains many cumbrous and unnecessary provisions which might more wisely have been eliminated, but as the result of the harmonization of many conflicting views it presents, as a whole, a fairly acceptable measure, capable of effecting some substantial and practical reform.

A reform law, however, no matter how excellent, cannot enforce itself. To make it a success it needs the support and encouragement of both the political parties which have united in its enactment. Without the aid of a friendly and intelligent public sentiment in its favor it will fail to secure the purity and independence in our elections so confidently predicted by its friends and so earnestly desired by every good citizen.

It has been my earnest endeavor during the past three years to secure the enactment of a law which, while preserving the purity of our elections and promoting the independence of the voter, should not unnecessarily infringe upon the rights of citizens or violate constitutional guarantees. I have not believed that reform consisted merely in making the exercise of the elective franchise difficult and complicated. I have regarded it as important that the path to the ballot-box should be made as free, plain and unobstructed to the honest elector as a simple and practical statute could render it, and as the public safety would permit. I have steadily opposed every effort to impose unnecessary restrictions and impracticable regulations upon our election system, which are not adapted to our free institutions, or which would render our elections enormously expensive and vexatious. It is to be regretted, however, that such endeavors have only been partially successful. In the interest of an honorable compromise of diverse opinions, and with a sincere desire to agree upon a bill which should accomplish something towards the purification of our elections, even though it shall not be wholly satisfactory, I have felt constrained to yield my views as to several provisions which I must still deem imperfect and which I firmly believe will be generally so regarded when the defects shall be more fully disclosed in the practical operation of the new system.

I have not strenuously insisted upon my own convictions in regard to the mere details of the measure, so long as no surrender of essential principles has been required — principles vital to the maintenance of free manhood suffrage.

It may, however, be safely asserted that the constitutional objections heretofore urged to the other bills upon the same subject have been removed, and the other principal objections previously suggested have been largely obviated.

A brief reference to the changes wrought since the first bill was introduced, three years ago, may not be inappropriate.

The original bill did not contemplate or authorize the voting for any candidates except those duly nominated upon the official ballot. This was and is the distinctively peculiar theory of the Australian system proper. It was not adapted to our system of government and it soon had to be abandoned.

The first bill retained another obnoxious feature of that system, to wit: the marking of the initials of the ballot clerks upon the back of the ballot itself. This destroyed the secrecy of the ballot and was clearly unconstitutional and had been virtually so decided in a sister State. (Williams v. Stein, 38 Ind. R., 89.) This provision could not stand the light of legal discussion, and it was surrendered the next year.

The same bill omitted, through inadvertence or otherwise, to provide any method or means of filling any vacancy which might occur upon any ticket by means of the death, resignation or ineligibility of any candidate, happening within fifteen days of an election. It strangely omitted all provisions for voting in case of the destruction or loss of the official ballots. The bill also contained numerous crude, unreasonable and odious provisions which were wholly indefensible.

The second bill, passed in 1889, retained the clearly unconstitutional provision whereby the citizen's right to vote was made dependent upon nominations being made and certificates filed as prescribed therein. It was shown that the right to vote was an absolute right conferred by the Constitution, and not by statute, and no elector could be deprived of that right by the acts or omissions of parties or individuals.

The same bill contained that other distinguishing feature of the Australian system proper, to wit: Requiring each elector to vote for the candidate of his choice by marking upon the exclusively official ballot a cross (thus ×) opposite the name of such candidate, and prohibiting him from voting in any other manner.

It was demonstrated that such a provision was not only cumbrous and unnecessary, but that it disfranchised all those who were unable to read and write, and virtually established an educational qualification not authorized by the Constitution.[1] The bill made no provision whatever for voting by illiterate persons.

These two provisions were so flagrantly in violation of the Constitution that they were repudiated in the third bill which was passed. That bill, while an improvement in many respects upon its predecessors, still retained the exclusively official "blanket" ballot, and prohibited a voter from bringing with him into the polling-place any other kind or distinctive form of ballot which he was at liberty to vote. It is true that it allowed an elector to paste or write upon the 'blanket' ballot the names of one or more of his candidates, but it also imposed upon him the additional burden of erasing all the other names upon that ballot for whom he did not desire to vote; and, as an illiterate voter could not thus discriminate, he would have been unable to express his choice effectually. Voting by pasting, as permitted under that bill, required the erasure of every other name or else the vote was rendered nugatory, as the presence of two names upon the same ballot for the same office destroyed the vote.

In the discussion which that bill evoked it was conclusively established that the measure not only virtually disfranchised the illiterate elector, but that it impeded and hindered all other electors in the free exercise of the elective franchise. It was shown that the 'blanket' ballot was obnoxious to the provisions of the Constitution. It was made clear that such a form of ballot was not the kind of ballot in existence when the Constitution was framed, and was not contemplated by its provisions.

It was properly contended that a constitutional ballot should only contain upon its face the names of the offices to be filled and the candidates for whom the elector desires to vote. It was clearly maintained that the provisions requiring an illiterate voter to disclose his illiteracy on oath, and then compelling him, as a condition of his voting, to disclose his preferences to two election officers, were subversive of the Constitution and a destruction of the secrecy of the ballot. It is unnecessary to reiterate the unanswerable arguments which were appropriately urged in support of the many objections to that bill, as they are fresh in the public mind. It is sufficient to observe that they were so convincing that no effort was made in the Legislature to pass the bill over my veto.

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[1] Const. 1846, art. 2, § 1.

It is universally conceded, also, that the provisions regulating the election of ballot clerks were in violation of the organic law.

Having entire confidence in the soundness of the constitutional objections which were urged to that bill, and in the desire to obtain a speedy determination thereof for the guidance of the Legislature and the Executive in the framing of some satisfactory measure for the reformation of election methods, I suggested to the Legislature the submission of those questions to the Court of Appeals for the purpose of obtaining their informal opinion thereon, but the Legislature, for reasons best known to itself, refused to entertain the proposition, and the approval of the bill in the shape in which it was presented became impossible.*

After the veto of the third bill a new policy was apparently inaugurated, and the Legislature, through its committees, proceeded in good faith to frame a ballot reform measure, not for the object of embarrassing the Executive and inviting a fourth veto, but in the laudable desire to produce a satisfactory bill which would merit approval.

To that end conferences were sought and had with the representatives of the Ballot Reform League of New York as well as with the legal advisers of the Executive, and the result is the meritorious bill now before me, which has received the unanimous support of the Legislature, and which I cheerfully approve.

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* See *post*, p. 1044 for note on judicial aid in legislation.

The question as to what interests or which political party has conceded the most in the enactment of this compromise measure opens up an unprofitable discussion. A plain and concise statement of the provisions of the bill as agreed upon is all that it is wise to contribute to that issue, and that much cannot well be avoided.

The bill provides for the private booth or compartment system in which the voter must enter and where he is at liberty to prepare his ballot in secret. That provision I have urged and earnestly recommended ever since it was first suggested.

The bill provides for independent as well as party nominations, and authorizes the printing of all ballots at public expense. While originally doubting the wisdom of these innovations, I have repeatedly stated in my various messages that I entertained no serious objection thereto, provided the powers conferred were carefully guarded with necessary and suitable restrictions for the prevention of abuses. It may well be doubted whether these provisions will effect all the reforms claimed in their behalf, or that they will materially reduce the expenses of candidates; but they are worthy of a fair trial.

The 'blanket' ballot, which has been one of the leading features of all the previous bills, has been abandoned. To that form of ballot I have always strenuously objected, believing it to be not only cumbersome and unnecessary, but unwarranted by the Constitution.

There has been substituted in its place the form of ballot now in use, to which the people are accustomed and to which I firmly believe they desire to adhere. Each set of nominations is to be printed on a separate ballot, and one additional ballot is to be furnished, on which only the names of the offices to be filled are to be printed; and each voter on entering the polling-place is to be given one set of these ballots, and upon entering the private compartment he is to select one of them to vote and to return the others to the ballot clerks.

The bill also provides for a new species of ballot, known as a ' paster ' ballot, which the elector can procure outside of the polling place — at his own home or elsewhere — and which he is at liberty to bring with him to the polls; it may be gummed upon the back, and he is allowed to paste the whole thereof upon any of the official ballots which may be handed him, and vote the same.

The ' paster ' ballot answers every purpose of the ' unofficial ' ballot contemplated in the Linson bill, and preserves every substantial right of the elector. Instead of placing his ballot in an official envelope the elector is allowed to affix the same to an official covering which really performs the same service as the envelope. The illiterate voter may effectually indicate his choice by the use of the ' paster ' ballot, and he is not required to perform the impossible task of erasing names which he cannot read, or of making discriminations which he cannot comprehend.

A constitutional ballot is sacredly preserved. An elector is permitted to vote a ballot which contains the names of the offices to be filled and the names of the candidates of his choice, and those only. Nothing else is permitted upon the ballot. For the purpose of still guarding the rights of the elector and avoiding the constitutional questions heretofore raised, one official ballot which the elector is to receive, and upon which he is at liberty to affix his ' paster ' ballot, contains only the names of the offices to be filled. It cannot, therefore, be said, in case the elector uses that form of ballot, that any other names of candidates appear upon it, above it or under it, except those for whom he intends to vote.

In one sense it may be urged that the 'exclusively official ballot' is still retained. That may be so, but in another and broader view it is apparent that its peculiar characteristics have been largely destroyed or eliminated. I am not disposed, however, to haggle about mere words or useless technicalities. It is immaterial what the form of ballot or the method of voting prescribed in this bill may be called, so long as the vital and essential rights of electors, for which I have always contended, are substantially preserved and protected. During all the controversy of the past three years I have invariably insisted upon the right of an elector to prepare his own ballot at home and to bring it with him to the polls and to vote it; and so long as this bill does not materially infringe upon that right, I am content. I have never objected to any reasonable regulations which have been suggested, surrounding the casting of a ballot, the honest purpose of which has been the preservation of the secrecy of the ballot and the promotion of the purity of elections; but I have opposed every effort, no matter how disguised or insidious it may have been, which has sought to undermine the principles of manhood suffrage and to establish conditions, restrictions and qualifications not authorized by the Constitution itself.

Believing that this bill does not interfere with the rights of illiterate voters, I am satisfied with its provisions in that respect. Unlike the first two bills, this one applies to all elections for public officers by ballot, except school elections. There was no propriety in having two different systems of election throughout the State, one applicable to cities and another to municipal and other local elections in the country.

One defect which has existed in all the previous bills from which I have withheld my approval has been cured in this. A system of numbering the stubs upon each ballot has been devised, whereby it is believed that the evasion of the Australian system of voting, known as 'the Tasmanian dodge,' has been effectually prevented. This is regarded as a most valuable improvement.

The conceded unconstitutional section in relation to the election of ballot clerks contained in the last bill, upon which the whole structure of that bill rested, has been rejected and a valid and proper provision inserted.

The provisions embraced in all the previous bills, applying the new system to elections where constitutional amendments or other similar questions are to be submitted to the people, have been stricken out. The old system of voting is, therefore, still left applicable to such elections.

The number of electors necessary to present independent nominations has been increased from that required in the last two bills.

The construction of the proposed private booth or compartment has been more specifically prescribed than in the vetoed bills, and substantially conforms to the provisions of the Linson bill in that regard. The provision giving two hours to workingmen in which to vote on election day without deduction of their pay, first recommended by me in my annual message of 1889, and afterwards incorporated in the Linson bill of last year, has been included in this measure.

It is to be regretted that a proper general registration of electors is not provided for in the bill. It is true that I have heretofore insisted that such a provision is a necessary accompaniment of a genuine electoral reform bill, and should be contained therein. I have yielded my views upon that point only upon the assurance that such a measure, which was agreed upon by the leading representatives of both political parties and which passed the Senate nearly unanimously, would also pass the Assembly. I have relied upon the good faith of the Legislature in respect to that bill, in approving this measure with the registration provisions omitted.

The new method of voting which this bill adopts is not the Australian system, but it is a material modification of it. The good features of that system have been sought to be retained in this measure, while its bad ones have been rejected. The new method may more appropriately be styled the American reform election system, because it aims at practical rather than theoretical reform, and is in consonance with our American theory of government."

May 5.

Memorandum filed with Senate bill, chap. 279, relating to escheated lands. Approved.

"The necessity of substituting a few wisely devised general laws for the great mass of special legislation for separate individual cases has been insisted upon, with frequent reiteration, during many years. Such repeated insistence has not been without many valuable, but still very inadequate, results. The interposition of the Executive veto has in many cases been necessary to bring about the enactment of a general law which previous legislation for numerous special instances had shown to be desirable.

It has long been the practice of the Legislature to pass special laws for the release of escheated lands to those natural heirs of the last owner, who would have inherited but for their alienage or the alienage of those through whom they claim heirship. Prior to 1889 about twenty such special escheat laws, on an average, were passed each year. Escheat bills were often drawn with nothing to indicate how the State acquired title, and occasionally bills slipped through the Legislature under the guise of escheat bills which in reality gave away lands which had been purchased by the State upon mortgage foreclosure, tax sale or other valuable consideration. Last year, by several veto messages of special escheat bills, I expressed my determination to refuse to approve any more ordinary escheat bills, and a general bill was introduced last year conferring upon the Commissioners of the Land Office power to release escheated lands in certain cases. That bill failed to pass the Legislature upon objections made that its provisions were not sufficiently guarded. This year the Commissioners of the Statutory Revision, after consultation with various members of the Legislature, prepared this bill to meet the objections raised to the bill of last year, with the result that the bill passed both houses with substantial unanimity and without amendment, and it is, perhaps, a sufficient improvement upon the bill of last year to have justified the delay in its passage."

May 9.

Memorandum filed with Senate bill, chap. 314, the Syracuse Water Act.[37] Approved.

"The amendments which were made to this bill, after its recall from the Governor, removed every possible objection which could reasonably be urged to it on the part of the State. The privileges granted to Syracuse under its provisions cannot injure the Erie Canal. The rights of the State are absolutely protected. Those amendments were prepared upon consultation with the Superintendent of Public Works and the State Engineer. They can discover no objection to the bill in its present form, and their conclusion is in accordance with my own deliberate judgment.

So long as the interests of the State are fully guaranteed from injury, and it is perfectly certain that the Erie Canal will not be deprived of a single drop of water which it is entitled to have for its own uses, it is difficult to see why the city of Syracuse should not be permitted to enjoy any surplus waters which may exist. The State should not adopt a " dog in the manger " policy, and refuse to grant privileges the concession of which will injure no public interest, and which are regarded as vitally essential to the welfare of Syracuse.

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[37] This act, chapter 314, amended section 18 of the act of 1889, chapter 291. These acts were sustained in Sweet v. Syracuse (1891), 129 N. Y. 316.

The State should not seek to cripple or embarrass any municipality which it has created where it can easily and safely benefit that municipality. The true friends of the Erie Canal need not be alarmed over the effect of this bill. It is carefully drawn, and it is believed that it will never harm that canal one iota.

The city of Syracuse needs the surplus waters from Skaneateles Lake, and its citizens are willing to accept all the risks and responsibilities which this measure imposes upon them. They, and not the State, accept the hazard of a scarcity of water. All the present rights of the State are faithfully preserved, and they are expressly declared in the bill to be superior to those of Syracuse. The Superintendent of Public Works is vested with the power to shut off the supply to Syracuse at any time in case there should ever happen to be a deficiency of water for the uses of the canal. No such contingency need, however, be apprehended. There is water enough in that lake for the State, and also for Syracuse and Skaneateles. Such is the judgment of the best engineers who have given the matter their attention, and I am willing to accept their conclusion.

Whatever the merits of the original bill may have been, there can be little question but that the amendments have removed all possible ground for criticism, and I cheerfully approve the measure, feeling that while not injuring the State, substantial relief can be afforded the citizens of Syracuse."

THIRTY-DAY BILLS.

May 13.

Memorandum filed with Senate bill, chap. 316, making an appropriation for work on the State Capitol. Approved.

"This bill appropriates a total sum of $365,125 for work upon the Capitol, and creates a commission consisting of the Lieutenant-Governor and the State Engineer and Surveyor, who are associated with Capitol Commissioner Perry in the control of the work.

There is no objection to the amount appropriated, except that it is insufficient. By the terms of the bill a large share of the moneys is required to be used in making indispensable repairs, in furnishing parts of the building already completed, and in effecting necessary alterations in portions constructed years ago, before Commissioner Perry was ever appointed, leaving only a balance of $175,175 towards the legitimate progress of the completion of the Capitol. That amount is only applicable towards the construction of the western staircase from the second to the third floor, and for work upon the corridors adjoining that staircase on the first and second floors. It will be seen that the amount actually appropriated is wholly inadequate towards accomplishing very much towards the substantial completion of the Capitol.

The construction of a single staircase, and only one story of it each year, is an unbusinesslike performance, and it is characteristic of the methods which have been pursued by the Legislature ever since 1884. The Capitol should be completed at the earliest possible time. The needs of the State, the interests of true economy and the natural pride of our citizens all unite in demanding that the Capitol of our State should no longer remain in an unfinished condition. No good business man would conduct his own private affairs as the Legislature has managed the work upon the Capitol during many years.

The selection again of a commission to be associated with Commissioner Perry is to be regretted, and that portion of the bill is regarded as objectionable. There is no objection to the *personnel* of the commission, but any commission whatever is unnecessary. My views upon this subject have been so frequently expressed that it seems needless to reiterate them. I believe in the reform policy inaugurated by the Legislature of 1883, of having the work upon the Capitol under the sole charge of one competent architect and builder. This was the course substantially recommended by Governor Dix, many years ago, in one of his messages,* and renewed by Attorney-General Russell when he was one of the Capitol Commissioners in 1883. I believe that it has always proved a mistake to depart from that policy.

There should neither be a partisan nor a non-partisan commission in control of such a work, but it should be placed under one responsible and competent head.

The legislation pertaining to the Capitol, almost from its very inception, furnishes a history of repeated blunders and fickleness. The original act for the construction of the New Capitol, passed in 1865, provided for a board of three commissioners to be appointed by the Governor and confirmed by the Senate. In 1868 the three commissioners so appointed were legislated out of office, and eight new commissioners were named by the Legislature itself in their stead, by a provision improperly inserted in the general appropriation bill. In 1871 the eight commissioners were legislated out of office and six New Capitol Commissioners were named in the annual supply bill of that year. In 1875 the practice of having individual commissioners appointed by the Legislature was abandoned, the old board was abolished and a new board created (by a provision in the supply bill), consisting of the Lieutenant-Governor, the Auditor of the Canal Department and the

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* *Ante*, vol. 6, p. 652.

Attorney-General. The impropriety of such kind of legislation could not have been more fitly illustrated than by making the auditing officer of the Canal Department a commissioner for the construction of the New Capitol. These *ex-officio* commissioners continued in office until 1883, when the office of Canal Auditor was abolished and a new policy was inaugurated, by placing the whole control of the construction of the Capitol in the hands of one competent architect and builder. This was a reform measure for which both parties claimed credit after the adjournment of the Legislature of that year. Under its provisions Isaac G. Perry, a thoroughly honest man and a most competent and experienced architect and builder, was appointed the New Capitol Commissioner, and he has ever since continued to hold the position. But very shortly the effort to surround him with a commission was renewed, and in 1885 the Legislature unwisely created a "Board of Advisory Commissioners," consisting of "the Governor, the Attorney-General, the President of the Senate (or if there be no President then the President *pro tempore*) and the Speaker of the Assembly," vesting said officers with certain limited powers over the construction of the Capitol. In 1886 the Legislature passed another bill abolishing the office of New Capitol Commissioner and constituting a new board of Commissioners of Construction, consisting of the Governor, the Lieutenant-Governor, the Speaker of the Assembly and the temporary President of the Senate, which measure I vetoed upon the ground that commissioners were unnecessary, and that the policy adopted by the Legislature of 1883, of having one experienced builder in sole charge of the work, should be maintained. The Legislature adhered to its position and refused to appropriate any other moneys for the Capitol either that year or the next. In 1888 the Legislature renewed the effort for the creation of commissioners, and unfortunately succeeded in establishing two, one for the continuance of work upon the

State Library, consisting of the Lieutenant-Governor, the President *pro tempore* of the Senate and the Speaker of the Assembly, and the other for the repairing of the Assembly ceiling, consisting of the Speaker of the Assembly and four members of the Legislature to be appointed by him. These last two measures were approved by me with great reluctance and only after strongly protesting against the impropriety of their provisions. Subsequent events justified the grounds of my opposition and demonstrated the wisdom of adhering to the system adopted in 1883. Last year the Legislature passed another bill substantially like the one before me, except that it continued the commission which consisted of the Lieutenant-Governor, the President *pro tempore* of the Senate and the Speaker of the Assembly; but I refused to approve the measure upon the ground of my repeatedly expressed opposition to all commissions.

I cannot understand why the Legislature should persist in foisting upon the State a wholly unnecessary and useless commission. It is neither good politics nor business-like action. It is a violation of a sound principle and a continuation of a bad policy.

A commission is none the less objectionable when it is composed of party friends than when constituted partly of political adversaries. My objection is based upon the principle involved, and not to the individual members of any commission which may be selected.

The facts which confront me are these: The work upon the Capitol should be progressed; the building is in a wretched state of repair; additional accommodations for the second division of the Court of Appeals are imperatively demanded; the sanitary condition of the Capitol ought to be improved; and as the Legislature refuses to appropriate a single dollar for such purposes unless it shall be expended under the supervision of a commission of its own selection, it follows that I must yield my own conviction as heretofore expressed, or else imperil the safety of the building, the health of its occupants, and be the means of keeping many deserving workmen out of employment. For these reasons I have concluded to formally approve this measure, not because it meets my judgment, but because it is the best and all that can be obtained at the present time."

May 26.

Memorandum filed with Assembly bills, chaps. 442 and 443, and with Senate bill, chap. 444, relating to certain streets in the city of Brooklyn.

"I am informed that these bills are meritorious; and I am also informed, by the corporation counsel of Brooklyn, that no power is now vested in any of the local authorities to take the actions authorized by these legislative acts. I am opposed to the practice of State legislation in matters which properly fall within the province of local government. The charter of Brooklyn should be amended so as to commit to some branch or branches of its local government, power, under well-guarded restrictions, to deal with questions touching the opening, closing, extension or alteration of the streets of that city. Hereafter I shall not regard it as incumbent on me to approve any act of this character, though otherwise proper in form, which concerns matters that should fall within the powers of local authorities, and which can be entrusted to them by an amendment to the charter of the city."

June 5.

Memorandum filed with Assembly bill, chap. 505, regulating the price of illuminating gas in certain cities. Approved.

"I have heretofore recommended the creation of a State Gas Commission (which should also include in its jurisdiction all telephone and electric-light companies), to be invested with limited powers somewhat similar to those possessed by the Railroad Commission over railroads. [See note 19.] I have approved during the past few years several bills regulating the price of gas in various cities of the State, but more than once I have intimated my reluctance to approve any more such bills until such a commission should be created, by which the propriety of such measures might be carefully investigated and legislative action might be based upon the recommendations of such a commission.

The regulation of the price of gas, as well as charges for electric lights and telephones in different cities by legislative act, is a power liable to abuse, and should only be exercised after proper investigation by a competent board. Corruption, prejudice, fickleness, unfairness or favoritism, are too apt to characterize or accompany legislation upon such an important subject, particularly in the absence of semi-judicial investigation of the conditions and circumstances which should naturally affect its determination.

I am still impressed with the desirability of such a commission as I have suggested, and trust that another Legislature may in its wisdom pass a carefully guarded measure carrying out this recommendation, to the end that the possibility of hasty, arbitrary or ill-considered legislation upon this subject may be avoided.

The present bill, however, as I understand it, makes very slight changes in existing prices, and in present statutes applicable to the various cities of the State; and as such changes seem to be in the right direction and reasonable, it is believed, upon the whole, that the public interests will be best subserved by the approval of this measure."

June 6.

Memorandum filed with Senate bill, chap. 523, relating to the sheriff's office, New York City and county. Approved.

"This bill is the outcome of recent investigations into the management of the sheriff's office of New York city.

As soon as it appeared upon such investigation that unauthorized or improper charges were being made by subordinate officials in the sheriff's office, there arose a loud demand for a change in the system under which sheriff's offices are usually conducted, by substituting salaries in the place of fees. It was claimed that if salaries were authorized for the sheriff and his subordinates, and all fees collected by them were turned over to the city, that abuses would cease and a solution of the whole subject of reform in that department would be effected. This bill proceeds substantially upon that theory, but it may well be doubted whether the benefits predicted for it will ever be realized.

The mal-administration in the sheriff's office may be deemed to have arisen — first, because of the inadequacy of existing legal fees established many years ago; and, second, because of the pernicious custom of making improper or extortionate charges by unscrupulous officials, and the receipt of what are known as "gratuities."

The remedy for these abuses would seem to have been a reasonable and proper increase of legal fees, and the enactment of a strict penal statute prohibiting and severely punishing the taking of anything, by way of gratuity or otherwise, in excess of such fees, for the discharge of official duties or acts arising out thereof. Such a penal statute has already been passed (chapter 336, of the Laws of 1890), and a simple bill, accompanying the penal statute, moderately increasing the sheriff's fees, would have completed all the legislation necessary for the correction of existing evils.

A few years ago, under the influence of a whirlwind of popular agitation, the Legislature passed bills making the register's and county clerk's offices salaried offices, and such hasty legislation has resulted in making both of those offices a burden upon the taxpayers of New York city. Those offices are not now self-supporting, as appears by the following statement furnished to me at my request by the Comptroller of that city, and by which it is proved that during the past two years the expenditures incurred on the part of the city largely exceed the fees received from those offices, and up to the present date this year the expenditures substantially equal the receipts.

COUNTY CLERK'S OFFICE.

	Fees received.	Expenditures.
1888	$77,432 24	$90,002 57
1889	56,944 98	86,713 60
1890, to June first	24,576 15	35,526 77

REGISTER'S OFFICE.

1888	$116,259 53	$129,181 52
1889	115,657 53	123,446 51
1890, to June first	50,212 88	49,005 10

The taxpayers of New York city may well doubt the wisdom of the measures which changed the system under which those offices were previously conducted, and which have rendered them burdensome instead of self-supporting as formerly. There are certain offices wherein the fee system, for many obvious reasons, should be absolutely abolished, but it is questionable whether the county clerk's, register's or sheriff's offices should be included in that number.

While expressing my doubts as to the wisdom of the essential features of this bill, yet, in view of the fact that there seems to be a public sentiment in its favor, and no objections have been filed against it on the part of the local authorities of New York, or on the part of any one else, I do not feel disposed to allow my misgivings to stand in the way of the measure having a fair trial."

This act was sustained in New York v. Gorman (1898), 26 App. Div. 191.

June 7.

Memorandum filed with Senate bill, chap. 533, to protect fish in Jamaica Bay. Approved.

"This bill having been referred to the commission appointed under chapter 99 of the Laws of 1890, to codify the laws for the protection of game, fish, etc., and such commission, after careful consideration of the proposed bill, having reported in favor of its becoming a law, there seems to be no adequate reason why I should withhold my signature from the measure."

June 7.

Memorandum filed with Assembly bill, chap. 547, making the county clerk of Chautauqua county a salaried officer. Approved.

"I have heretofore refused to approve bills of this character unless the salary of the official has been definitely fixed in the bill. The reasons for this course have been fully stated. (See veto of Kings County Clerk's Bill, Public Papers of 1885, page 194.*) But this bill, while not strictly complying with this view, nevertheless provides that the salary of the county clerk shall be determined by the board of supervisors 'prior to the election of every such clerk,' and this provision substantially answers the argument urged against the Kings county bill, and is perhaps as satisfactory as though the proposed salary was fixed in the bill."

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* *Ante*, p. 124.

June 7.

Memorandum filed with Assembly bill, chap. 540, to legalize water supply bonds of Baldwinsville. Approved.

"It is very desirable that a bill legalizing and validating acts of officers or instruments should specify the defects sought to be remedied, and be limited in its operation to such defects only. I am advised that the defects sought to be remedied by this bill do not easily admit of precise specification, and the bill having reached me too late to be recalled by the Legislature for amendment, I have concluded to approve it with the suggestion that its form should not be considered a precedent for future legislation of like character."

June 7.

Memorandum filed with Assembly bill, chap. 554, fixing the tax rate. Approved.

"This bill completes the legislation establishing the tax rate for the fiscal year beginning October first, next. The total rate will be 2.34 mills on each dollar of assessed valuation. While this is a considerable reduction from the tax rate of last year, it is to be regretted that the appropriations authorized by the Legislature this year are not appreciably less in amount than those for last year. Last year they amounted to $13,726,824,—not including items vetoed, and aggregating $1,808,550,—while this year they are about $13,094,000, not including items vetoed, so that the comparative economy of the Legislature is represented by only $632,000. But even this amount of reduction is only apparent, for the Legislature also, at the recent session, made provision for the submission of the constitutional prohibition amendment at a special election, thereby incurring an expense to the people, as I am informed by the Secretary of State, amounting to about six hundred and twenty-nine thousand dollars, which, though not included in the general tax levy, is no less a burden upon the people in their respective localities.

The tax rate is low, first, because nearly two million dollars were unnecessarily collected from the taxpayers last year and now remain as a surplus in the State treasury; and, second, because the assessed valuation of taxable property has been increased by nearly one hundred million dollars since last year.

These are the facts. They are stated in order that the taxpayers may have a full understanding of the action of the Legislature upon the vital subject of taxation.''

June 7.

Memorandum filed with Assembly bills, chaps. 563 (relating to corporations), 564 (relating to stock corporations), 565 (relating to railroads), 566 (relating to transportation corporations other than railroads), 567 (relating to business corporations), and Senate bills, chaps. 569) (relating to towns) and 568 (relating to highways). Approved.

"These bills were prepared by the Commissioners of Statutory Revision, and represent the principal portion of their work of the past year, which has been adopted by the Legislature. By passing these bills and authorizing the continuation of the work of the Commission for another year, the Legislature has declared its intention that a thorough revision of the general statutes of the State shall be pushed to completion as speedily as possible. The necessity for such a work has been felt with constantly increasing force for over forty years. The commission's report of an outline sketch of the proposed revision, and of the principles upon which it should proceed, is in every way admirable. As to the execution of the work in detail, I must rely, as the Legislature doubtless also has, upon the Commissioners. It has been impossible, in the limited time at my disposal, to study all these bills, much less to compare them carefully with the existing laws for which they are to be substituted. In several respects, certain of these chapters of the proposed revision are confessedly incomplete. Some important penal provisions of the statutes repealed have been omitted, with the intention of incorporating them in the Penal Code, which has not yet been done. If these bills were to take effect immediately, I could not approve all of them in their present form. But they do not take effect until May 1, 1891, and have, as I am advised, been passed by the Legislature with the intention that they should be carefully reconsidered by the Commission, with the aid of expected criticisms and suggestions from the people and the legal profession, before the next session of the Legislature, and that they should be amended and supplemented by the next Legislature before they shall take effect.

It has been my custom to insist that a bill should be perfected before it is placed upon the statute books, and, as a general principle, I have been opposed to enacting laws to take effect after a subsequent session of the Legislature. But a revision of this nature must necessarily proceed by installments, and each part must, of necessity, depend somewhat upon the other parts, which together are to make the completed whole. These considerations fairly entitle these bills to be treated as exceptions to the general rules referred to.

With this understanding of the provisional rather than final character of these bills, and in view of their exceptional character, I cheerfully give them my approval, without assuming to be fully acquainted with their provisions in detail."

Chapter 564, as amended 1897, Chap. 384, § 53, was sustained in Pelletreau v. Greene Consol. Gold Min. Co. (1906), 49 Misc. 233.

Chapter 565, § 62, as amended 1897, Chap. 754 (grade crossings) was sustained in Re Boston & A. R. Co. (1901), 64 App. Div. 257, affirmed in 170 N. Y. 619; § 98 (street railroads, pavements) in Doyle v. New York (1901), 58 App. Div. 588.

Chapter 566, § 69 (gaslight companies, meter rents prohibited) was sustained in Buffalo v. Buffalo Gas Co. (1903), 81 App. Div. 505.

Chapter 568, § 89 (highways, compensation) was sustained in Re De Camp (1897), 151 N. Y. 557; People ex rel Hanford v. Thayer (1895), 88 Hun, 136.

Chapter 568, §§ 106–116 (highway law, private roads) was held unconstitutional in Berridge v. Shults (1900), 32 Misc. 444.

Chapter 569, § 163, was sustained in People ex rel. Rice v. Sup'rs Orleans (1904), 98 App. Div. 390.

June 9.

Veto of the following bills:

Assembly bill No. 1441. New York city, Soldiers' and Sailors' Memorial Arch or Monument, to provide for.

Memorandum.— There is a fatal objection to this bill. It names three private citizens who, together with certain local officers, shall constitute a board of commissioners to erect a memorial arch or monument with moneys raised by taxation. This is a bad principle of legislation, which I have frequently condemned.

There would be no objection to bestowing such permissive powers upon the local authorities alone, or upon commissioners selected by them, or upon commissioners elected by the people of New York, but the Legislature should not undertake to specifically name commissioners to expend moneys raised by local taxation and to be used for local purposes. Such legislation, irrespective of the laudable purposes which may have inspired its introduction and passage, is unjust to the people whose money is authorized to be expended.

Senate bill No. 191. Buffalo charter.[38]

Memorandum.—A proposed new charter, the outgrowth of the labors of the Citizens' Committee of the City of Buffalo, representing the prominent trades and industries of that city, was introduced in the Legislature on February 12, 1890. (See Assembly bill, printed number 498.) It was contemplated by that bill that the provisions thereof, except such parts as related to the water department of that city and to the election of certain officers, should not take effect until January 1, 1891. Vital alterations were made in the original bill before it passed the Senate and Assembly, which I am convinced were not and are not acceptable to the taxpayers of the city of Buffalo.

It appears that the provisions of title 10, applicable to the creation of a department of public works, have been unnecessarily and injuriously changed. The bill introduced last year provided for the creation of a department of public works, a majority of the members of which was to be appointed by the then mayor of the city. I understand that there was then no serious objection to that provision, but the whole bill failed of passage.

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[38] Buffalo received a new charter in 1891, chapter 105. Section 504, labor regulations, was sustained in People v. Warren (1894), 77 Hun, 120; People ex rel. Warren v. Beck (1894), 10 Misc. 77, reversed without considering constitutionality of statute in (1894), 144 N. Y. 225.

Section 397, am. 1895, chap. 805, sec. 26, street repairs, was sustained in People ex rel. Bull v. Buffalo (1900), 52 App. Div. 157, aff'd 166 N. Y. 604.

Section 271 as am. 1895, chap. 805, commissioner of public works, was sustained in People ex rel. Ward v. Scheu (1901), 167 N. Y. 292.

Section 374, supervisors, was held unconstitutional in People ex rel. Howard v. Wende (1898), 25 Misc. 330.

Section 184, as am. 1899, chap. 587, police commissioners, tribunal to try charges against, was held unconstitutional in Re Rupp (1899), 28 Misc. 703, aff'd 45 App. Div. 631.

No good reason has been advanced why the present mayor of Buffalo should not be entrusted with this power. I am advised that he is giving to the people of that city an honest, economical and business-like administration of its affairs, and this fact, taken together with the confidence manifested in him by the large majority by which he was elected, justify the conclusion that if this power should be placed in his hands it would be used solely for the benefit of the taxpayers of the municipality. Vast power and responsibility for good or evil is proposed to be entrusted to the public works department, and the best men obtainable should be selected to constitute the commission.

It is suggested that a single-headed department of public works, the chief officer of which should be appointed by the mayor, to hold during the term of the mayor, would best subserve the public weal. There could be then no divided responsibility, and the taxpayers could easily ascertain to whom credit or censure belongs.

The bill also provides that the first board of public works shall consist of the present street commissioner and engineer, and of a commissioner to be elected at the next annual election, and their duties are to begin on the first Monday of January next. It is safe to say that when the people elected the present street commissioner and engineer they had no idea that these officers would be legislated into such a department as this bill contemplates. There could be no objection to providing that these officers should remain at the head of their respective bureaus during their terms of office, but to place such vast power in the hands of officers who were not elected for such purpose, and who may not have the requisite qualifications for such important work, is at least a hazardous undertaking. Most of the good to be obtained from the creation of this department will largely depend upon the first organization of the department, and if an improper or weak organization is effected at its creation, the bad results of such a policy might be much worse than the evil attempted to be remedied by this bill.

The bill as it was first introduced this year also provided for the election of eight aldermen-at-large, but no elector was permitted to vote for more than five, thereby intending to secure minority representation among the aldermen-at-large. It was discovered, however, that the provision for minority representation was unconstitutional, and, therefore, all reference to aldermen-at-large was abandoned. It was proposed by some of the members of the Assembly representing part of the city, that aldermen-at-large should be elected by Assembly districts, four from the first and second Assembly districts, and four from the third Assembly district and the twelfth ward, thus giving no particular advantage to one party over another, the understanding or presumption being that four Democratic and four Republican aldermen-at-large would be elected. This proposition seems a fair one, and some good to the city might result from it. At least, it might safely be tried as an experiment.

Another serious objection to this bill is that it increases the salaries of officials upwards of one hundred thousand dollars a year. The chief object of this bill was supposed to be a reduction of municipal expenses. This enormous increase in salaries cannot be justified from the standpoint of the over-burdened taxpayers, and I cannot approve such a scheme. It should also be noted that, while the reforms sought to be accomplished by this bill are postponed until next January, the title increasing the salaries of officials takes effect immediately.

Besides the objections already pointed out there are other minor defects which can be cured upon further consideration. Several provisions are of doubtful interpretation, and are unfortunately expressed.

It is difficult to resist the conclusion that a desire to secure partisan advantage, rather than to secure to the people capable and efficient public servants, prompted many of the changes made in the bill.

I would cheerfully approve any well-considered bill which affords reasonable assurance of curing whatever evils may exist in the municipal government of the city of Buffalo, but I am constrained by a sense of the obligations due to the citizens of that city to withhold my signature from the bill in its present shape. The Legislature will again convene about the time the important provisions of the act would take effect, so that no harm can result from this action.

Senate bill Int. No. 727. Constitution, article 6 of, to provide for submitting proposed amendment of, to the people.[39]

Memorandum.— This bill must be regarded as defective. Either through inadvertence or design the method of voting provided for does not submit the question to the people fairly, but prejudices the matter by making it easier to vote in favor of the amendment than against it. The voter who desires to vote against the amendment must, if he writes out his own ballot, first write it as follows: "For the proposed amendment to the Constitution relating to the election of additional justices of the Supreme Court," and then cancel it with ink or pencil. The bill provides for printed ballots to be furnished at each polling place at public expense, but all are to be printed in favor of the amendment.

No ballots printed or written originally against the amendment can be voted. There is absolutely no method provided for voting against the amendment, except by first taking a ballot in favor of the amendment and canceling it. That is not the American system of voting, and is inherently inconsistent and misleading.

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[39] In 1892, another bill was passed submitting this amendment to the people, but it was rejected at the general election in November of that year, by a vote of 161,759 to 198,110. The election law, L. 1896, chapter 909, provided for the submission of constitutional amendments to the people by the Secretary of State without a special act.

I am unable to discover any precedent for this peculiar feature of this measure. No good reason exists why the usual method of submitting constitutional amendments always heretofore pursued should not have been followed in this instance.

I decline to approve this bill with less hesitation because of the existence of the commission just organized to propose a revision of the entire judiciary article of the Constitution.* The public interests will not suffer serious injury if the action upon this particular amendment should be deferred until after the report of the commission.

Senate bill No. 294. Police matrons, amending act to provide for.

Memorandum.— The present law merely authorizes the appointment of police matrons in cities. This bill proposes to compel their appointment, whether the local authorities deem it necessary or not. It is desirable that the local authorities should retain control of the situation, and arguments to them should be first exhausted, and only after it is shown that they are obstinately or culpably remiss in exercising their powers in a reasonable manner under present permissive laws, should their discretion be taken away and action on their part be made compulsory. I am disposed to concede that the local authorities of certain cities have not exercised their discretion in accordance with the spirit of the present law, but it seems to me wise that they should be given another year in which to make the needed changes on their own motion, and if after another year's experience a permissive law shall still prove futile, the argument in favor of a compulsory law will be much more forcible.

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* By chapter 189, passed April 26, a commission was created to propose amendments to the judiciary article of the Constitution. The commission was to be composed of thirty-eight members, appointed by the Governor and Senate. Eight commissioners were to be appointed from the first judicial district, six from the second, and four from each of the other six districts. Not more than one-half of the commissioners appointed from a judicial district were to be members of the same political party.

The commission met at Albany on the 3d of June, 1890, and finally adjourned on the 23d of January, 1891. Its report was submitted to the Senate on the 4th of March, 1891. The commission recommended several amendments to the judiciary article, but none of them were adopted by the Legislature. Some of the commission's recommendations were included, with modifications, in the Constitution of 1894.

June 9. The omnibus veto included the following bills:

BILLS AFECTING NEW YORK CITY.

Assembly bill No. 1466, Cable Railroad Bill.

Senate bill No. 621, New York city, bridges over Harlem River, to authorize increased elevation of.

Senate bill No. 576, New York city, Croton aqueduct, to provide for settlement of claims relating to construction of.

Assembly bill Int. 1168. New York City Aqueduct Act, amending.

Assembly bill No. 1034. New York City Consolidation Act, sections 322, 921 and 915, amending. (Department of Public Works and Assessments for Improvements.)

Assembly bill No. 943. New York city, Nelson J. Waterbury and Nelson J. Waterbury, Jr., to authorize retaxation of amount to be paid to for services in case of Sheldon, as Assignee, v. City of New York.

Assembly bill No. 1427. New York city, claim of against the Central Park, North and East River Railroad Company, to authorize settlement of.

Assembly bill No. 950. New York city, Central Park, amending act relative to railways in transverse roads of.

Assembly bill No. 831. New York city, to provide for annexation of Hart's Island to.

Senate bill No. 511. New York City Consolidated Act, section 446, amending. (Hydrants.)

Senate bill I. No. 765. New York city, Sanitarium for Hebrew Children, to exempt property of from local taxation.

Assembly bill No. 131. New York City Consolidation Act, subdivision 8 of section 194, amending. (Relief of poor adult blind persons.)

Senate bill No. 121. New York City Consolidation Act, section 1929, amending. (Election advertisements.)

Assembly bill No. 709. New York city, Martha Krenkel, for relief of.

Assembly bill No. 1258. New York city, escheat, amending act releasing to Henry Spicer and others.

Assembly bill No. 1442. New York city, amending act to annex Morrisania, West Farms and Kingsbridge to, relative to exempt firemen.

Senate bill No. 590. New York city, property in One Hundred and Twentieth street, authorizing settlement of taxes on.

Senate bill No. 432. New York Building and Improvement Company, amending act to incorporate the.

BILLS AFFECTING BROOKLYN AND KINGS COUNTY.

Senate bill I. No. 598. Brooklyn Municipal Building, to provide for increase of office accommodation in.

Assembly bill No. 1080. Brooklyn Consolidation Act, section 20, amending. (Moneys to be paid to charitable institutions.)

Assembly bill No. 491. Brooklyn Police Courts, to facilitate administration of criminal justice in.

Assembly bill No. 1272. Brooklyn Consolidation Act, section 1, title 10, amending. (Department of Assessment.)

Assembly bill No. 1370. Brooklyn Consolidation Act, section 5 of title 11, amending. (Police Force.)

Senate bill No. 499. Brooklyn, public parks in, to authorize selection of lands for.

Assembly bill No. 1199. Flatbush, street lighting in, amending act to provide for.

Assembly bill No. 166. Gravesend, authorizing Board of Health of to sell sewer property.

Assembly bill No. 1096. Kings County, to create County Farm Commissioners in.

Assembly bill No. 803. Gravesend, amending act for preservation of the peace in.

Assembly bill No. 1145. Civil Procedure, Code of, section 1127, amending. (Exemptions from jury duty in Kings county.)

GENERAL AND MISCELLANEOUS.

Assembly bill No. 751. New York and Long Island Bridge Company, amending act to incorporate the.

Assembly bill No. 1467. Railroad companies, street surface, relative to percentages to be paid by.

Senate bill No. 633. Railroads, grade crossings of, amending act to regulate.

Assembly bill No. 1377. Railway companies, street surface, in relation to consents of.

Assembly bill No. 1215, New York harbor, to establish exterior bulkhead lines on Staten Island side.

Senate bill No. 345. Dairy products, amending act to prevent deception in.

Senate bill Int. 705. Legislature, additional contingent expenses of, appropriation for.

Assembly bill No. 1464. Milk, skimmed, to regulate sale of in cities of upward of 50,000 inhabitants.

Assembly bill No. 511. Teachers, professional training of, to promote the.

Senate bill No. 133. Natural history, free instruction in, making appropriation to continue.

Assembly bill No. 1500. Printing, public or legislative, amending act providing for.

Assembly bill No. 1152. Indians, to provide for welfare of the.

Senate bill No. 346. Milk, seizure or destruction of amending act relating to.

Assembly bill No. 1021. Claims, Board of, claim of John D. Hutchinson, to hear.

Assembly bill No. 1020. Claims, Board of, claim of Charles M. Brown, to hear.

Senate bill Int. No. 733. Electrical investigation by Senate Committee on General Laws, providing for printing and distribution of 5,000 extra copies of testimony taken in.

Senate bill No. 334. Notaries public, amending act for appointment of, relative to fees of county clerks.

Senate bill No. 548. Manufacturing corporations, amending act to authorize consolidation of.

Assembly bill No. 685. State armories, taking of lands for, in certain cases, amending act to authorize.

Senate bill No. 173. Buffalo Association for the Relief of the Poor, amending act to incorporate and to change name of.

Assembly bill No. 1463. Buffalo, to legalize action of engineer relative to excavation of Guilford street, and authorizing audit of claim of John Gisel.

Assembly bill No. 1246. Buffalo Law School, with reference to the.

Assembly bill No. 416. Buffalo Police Department, amending act to establish.

Senate bill No. 232. Niagara county surrogate, to establish compensation of.

Senate bill No. 454. Claims, Board of, claim of Edwin H. Risley, to hear.

Assembly bill No. 967. Civil List, appropriation for printing and distribution of.

Assembly bill No. 1440. County superintendents of the poor and county treasurers, amending act authorizing election of.

Senate bill No. 212. Long Island City charter, amending generally.

Senate bill No. 477. Public Instruction Consolidation Act, amending. (Flags for public schools.)

Assembly bill No. 1036. Civil Procedure, Code of, section 3036, amending. (Appeals.)

Assembly bill No. 628. Revised Statutes, subdivision 2 of section 9 of article 2 of title 2 of chapter 13 of part 1, amending. (Assessments.)

Assembly bill No. 768. Springfield Centre, amending act to make a separate road district of.

Senate bill No. 549. Claims, Board of, claim of William J. Best, to hear.

Assembly bill No. 1216. Horse stealing, societies for prevention of, amending act for formation of.

Assembly bill No. 1217. Horse stealing, societies for prevention of, amending act for formation of.

Senate bill No. 387. Delhi and Hudson River Railroad Company, to repeal act to extend charter of.

Senate bill No. 532. Parishville, St. Lawrence county, authorizing maintenance of lock-up by.

Assembly bill No. 1256. Claims, Board of, claim of Charles B. Bensen, to hear.

Assembly bill No. 617. Civil Procedure, Code of, section 1533, amending. (Actions for partition.)

Assembly bill No. 1227. Jefferson county, amending act to enforce collection of taxes in.

Assembly bill No. 1023. Mortgages on real estate, to legalize foreclosure of, by advertisement.

Assembly bill No. 1070. Claims, Board of, claim of Lieutenant Gustavus C. Hanus, to hear.

Assembly bill No. 1226. Northfield, Richmond county, amending act relating to Board of Education in, etc.

Assembly bill No. 904. Factory inspectors, amending act providing for, relating to reports of accidents.

Assembly bill No. 437. Judgments of United States Courts, to authorize docketing of in county clerks' offices.

Assembly bill No. 1229. Town auditors, amending act conferring additional powers on.

Assembly bill No. 1200. Amsterdam charter, amending. (Official newspapers.)

Assembly bill No. 148. Ichthyological societies, for the incorporation of.

Assembly bill No. 622. Claims, Board of, claim of Thomas R. Leet, to hear.

Assembly bill No. 1260. Contracts in behalf of the State, to require public notice to be given of.

Assembly bill No. 771. Villages, water supply of, amending act to authorize, relating to boards of water commissioners.

Assembly bill No. 286. Revised Statutes, sections 59 and 60 of title 1 of chapter 20 of part 1, amending. (Relief and support of indigent persons.)

Assembly bill No. 630. Claims, Board of, claim of Abner L. Roberts, to hear.

Senate bill Int. No. 700. Haverstraw charter, amending. (Highway.)

Senate bill No. 258. Patriotism, to encourage and promote.

Assembly bill No. 1460. Newburgh charter, amending generally.

Assembly bill No. 898. Hop boxes, to regulate size of.

Senate bill Int. No. 655. Claims, Board of, claim of James G. Johnson, to hear.

Senate bill No. 442. Mechanics' lien law, amending.

Assembly bill No. 1282. Civil Procedure, Code of, section 1366, amending. (Executions.)

Assembly bill No. 1284. Civil Procedure, Code of, section 746, amending. (Investing Trust Funds.)

Assembly bill No. 1481. Criminal Procedure, Code of, section 944, amending. (Criminal statistics.)

Assembly bill No. 1066. Insurance companies, life, health and casualty, amending act in relation to.

Assembly bill No. 1502. Oswego Fire Department, amending act to incorporate the.

Assembly bill No. 1399. Tax collectors, requiring giving of receipts by.

Assembly bill No. 1210. Claims, Board of, claim of David T. Smith, to hear.

Assembly bill No. 1509. Little Falls, charter, amending generally.

Assembly bill No. 1339. North Elba, Essex county, for release of lands in, to Benton Turner.

Assembly bill No. 1053. Public works of the state, wages of laborers on, amending act to secure payment of.

Assembly bill No. 770. Villages, general act for incorporation of, amending, relative to oath of office.

Assembly bill No. 1111. Lumber, logs and other timber, amending act to regulate passage of, upon rivers.

Assembly bill No. 1401. Watertown charter, amending. (Sidewalks.)

Senate bill No. 120. Civil Procedure, Code of, section 2356, amending. (Sale of property of infants, lunatics, idiots or habitual drunkards.)

Senate bill No. 552. Long Lake, town hall in, authorizing raising of money for.

Senate bill No. 497. Johnstown, town officers, amending act relating to voting for.

Senate bill No. 452. Claims, Board of, claim of Miss Jennie Turner, to hear.

Senate bill Int. No. 602. Buildings, corporations for erection of, amending act authorizing formation of.

Senate bill Int. No. 455. Claims, Board of, claim of Harrison Holdridge, to hear.

Senate bill No. 379. Cohoes charter, amending generally.

Senate bill No. 437. Claims, Board of, claim of Julien T. Davies, to hear.

Senate bill Int. No. 512. Lordville and Equinunk Bridge Company, amending act to incorporate the.

Senate bill Int. No. 308. Elmira charter, amending.

HIGHWAY IMPROVEMENT.

Adopting the Governor's recommendation relative to county roads, *ante*, p. 923, a plan afterwards much enlarged, for the improvement of highways was initiated at this session by the enactment of chapter 555, passed June 7, which provided for the establishment of county roads in certain counties. The act applied to all counties not exceeding 200 square miles in area, and authorized the board of supervisors to assume the management and control of certain highways to be designated as county roads, which were to be improved and maintained at the expense of the county. The act contained regulations as to the construction and repair of roads, including materials to be used, and the work was to be done under the supervision of an engineer appointed by the Board. After a road had been constructed or repaired under the provisions of the act, it was to become a part of the local highway system, and subject to the general jurisdiction of local authorities.

In 1893, by chapter 333, amending the highway law of 1890, the board of supervisors of any county was authorized to adopt the county road system substantially in accordance with the foregoing county road act of 1890. Highways designated as county roads were to be, so far as practicable, leading market roads of the county. Roads so designated were to be constructed and maintained by the county and were to be under the exclusive jurisdiction of the board of supervisors and the county engineer. The act did not include cities and incorporated villages, but villages were included by L. 1895, chapter 375.

An act passed in 1898, chapter 351, provided for State aid to towns maintaining highways under the money system. The comptroller was directed to draw his warrant to the county treasurer for an amount equal to twenty-five per cent. of the sum levied in such a town for highway purposes during the preceding year. The State money was to be disbursed on the order of the highway commissioners of the town. The act further limited State aid to an amount not exceeding one-tenth of one per cent. of the taxable property of the town. In 1904, chapter 183, the proportion payable by the State was increased to fifty per cent.

Another act passed in 1898, chapter 115, authorized State aid to an amount equal to fifty per cent. of the expense of construction of county roads ordered by a board of supervisors. Thirty-five per cent. of the expense was to be paid by the county, and fifteen per cent. by the owners of property fronting on the improved highway if the improvement was made in response to a petition by them, and if the improvement was made by resolution of the board without a petition, such fifteen per cent. was to be assessed upon the town or towns in which the road was situated. The act imposed on the State Engineer and Surveyor various duties relative to such improved highways.

In 1903, by chapter 269, the State was to contribute annually fifty per cent. of the expense of maintaining and keeping in repair county roads already constructed under former statutes, but the State's contribution was not to exceed in any year one-tenth of one per cent. of the taxable property of the county.

In 1905 a constitutional amendment was approved by the people, article 7, section 12, which authorized the creation of a State debt of $50,000,000 for the improvement of highways. Such improvements were to be made under general laws. The amendment expressed substantially the policy of the good roads act of 1898, chapter 115, and limited the liability of a county to thirty-five per cent. of the expense incurred in the improvement of highways under any general law enacted to carry the constitutional provision into effect, and limited the liability of a town to fifteen per cent. in a like case.

An act passed in 1906, chapter 468, revised and amended the good roads act of 1898, chapter 115.

Another act passed in 1906, chapter 469, provided for the issue and sale of highway improvement bonds under the constitutional amendment. The same act appropriated $5,000,000 for good roads. This act was followed by chapter 470, which appropriated $225,000, or such amount as would be sufficient to provide a sum equal to the proceeds of a State tax of two hundred and seventy-five ten thousandths of a mill on each dollar of taxable property of the State.

Chapter 471 provided for the payment of interest on the highway improvement debt.

In 1907, by chapter 717, the good roads act of 1898, chapter 115, was amended in several particulars.

Another act of 1907, chapter 718, amended the bonding act of 1906, chapter 469.

JUDICIAL AID IN LEGISLATION.

The Governor's communication, *ante,* p. 946, suggesting an application to the Court of Appeals for its informal opinion as to the constitutionality of the pending ballot reform bill, was referred to the Senate judiciary committee for consideration, but on the 31st of March, and before the committee presented its report, the Governor vetoed the bill. The next day, April 1, the judiciary committee presented the following report:

"To the Senate.— The following resolution was offered in the Senate on the twenty-fifth day of March, by the Senator from the seventeenth district and referred to the committee on the judiciary:

'*Resolved* (if the Assembly concur), That the Legislature unite with the Governor in respectfully requesting the Court of Appeals (first and second divisions) to furnish its opinion informally upon the constitutionality of the provisions of the Saxton ballot reform bill now in the Governor's hands awaiting approval.'

After carefully considering the matter thus submitted to them, the said committee respectfully present the following report:

The resolution in question originated in a recommendation made by the Governor in his message to the Legislature dated March 25, 1890.

The bill mentioned in the resolution had passed both branches of the Legislature several days before the message was received. It reached the Executive chamber on the twenty-first day of March. The Governor had, on several occasions before the passage of the bill, publicly announced his opinion that some of its provisions were unconstitutional. The questions which it is proposed by the resolution to submit to the court were therefore before the Legislature at the time the bill was acted upon. They were discussed both in the Senate and the Assembly. Of the Senators who opposed the bill but one made an argument upon the constitutional questions, and he stated that he did not intend to express his own conviction that the bill was unconstitutional.

The proposition contained in the resolution is a plausible one and may seem, at first glance, to be fair and reasonable. The more closely it is examined, however, in the light both of reason and authority, the more evident does it become not only that it is entirely impracticable, but that if carried into effect its results would be mischievous in the extreme.

Many laymen do not know just how our courts proceed in passing upon a question of whether or not a statute is constitutional. It may therefore be useful, at the outset, to explain that our courts never decide upon an abstract proposition submitted to them. Constitutional questions, like all other questions of law, are always decided in actions brought before the courts to which individuals or corporations are parties. For example, one person sues another to establish a certain right which depends upon a statute enacted by the Legislature. The defendant claims that the statute is void because it conflicts with the fundamental law which is the Constitution. If the court concludes that the latter position is right it decides that the obligations based upon the statute cannot be enforced because the law which is paramount must prevail. We say, in speaking of the matter, that the court decided the statute to be unconstitutional; but as a matter of fact it did nothing more than determine the rights of citizens in relation to each other as those rights were affected by the Constitution. The only effect such a decision has outside of the particular case, is to establish a precedent; but as this precedent, under our system, will apply to all other cases that involve the same question, the practical result is that the statute becomes a dead letter. The constitutional law of the nation and of the various States that comprise this Union has been defined and settled by the courts in precisely this manner. Those States that have adopted the plan of submitting abstract propositions to the courts for decision, have departed widely from all the traditions of the common law. There are but four or five of them in all, and the benefits they have reaped from the plan are not very apparent. Certainly the other States do not seem inclined to follow their example.

Our own State once tried the experiment under a constitutional provision of having the chancellor and judges of the Supreme Court unite with the Governor in passing upon the advisability and constitutionality of pending measures; but history informs us that the experiment was a most unfortunate one, and it was finally abandoned in 1822.

The Governor now asks us to revive the system, not by law or constitutional enactment, but by a concurrent resolution of the Senate and Assembly. He invites the Legislature to establish, in this extraordinary manner, a precedent by virtue of which the courts may at any time, henceforth, be requested to aid in discharging the duties which the Constitution has imposed upon the Governor.

We are fully convinced that the resolution in question should not be adopted for the following reasons:

First. The judges of the Court of Appeals could not act upon it without sacrificing their own sense of dignity and self-respect.

The powers and duties of the Court of Appeals are defined by the provisions of our Constitution and the laws passed to carry the same into effect. Its powers are entirely of a judicial nature and are confined to such litigations between parties as may come up for its adjudication. Its duty is to review the decisions of inferior courts upon questions of law. It has no original jurisdiction whatever. The Governor states in his message that 'the jurisdiction of the Court of Appeals is not conferred by the Constitution but by statute;' but it seems clear to us that the Court of Appeals was intended by the Constitution to be an exclusively appellate court, and to exercise those judicial powers only that have always been exercised by courts among English speaking peoples. Whatever differences of opinion may exist, however, with regard to the powers of the original Court of Appeals, no one will question the fact that the second division cannot exercise any powers except such as are expressly given to it by the Constitution. The provisions of that instrument, which defines the jurisdiction of the second division, is as follows: 'The second division of said court * * * shall be competent to determine any causes on said calendar (that is, upon the calendar of the original court) which shall be assigned to said division by the court composed of judges elected to serve in the Court of Appeals.' The two divisions, according to the plain meaning of the Constitution, are to act separately; and no power has ever been conferred by law, nor can any law grant the power, which will enable them to act together in the determination of a case. We are thus driven to the conclusion that not even by statute could the courts be authorized to determine formally what they would be asked to decide informally by the resolution under consideration. It may be said that the resolution only calls upon the courts to give an opinion; but an opinion given under such circumstances would have and would be intended to have, all the weight of a judicial determination, so far as the bill in question is concerned.

The judges ought not to pay any attention to such a resolution if it were adopted. We are sure that they would refuse to comply with the request. They would not exercise powers, even informally, which have not been vested in them by proper authority and which our Constitution and laws never intended they should have. They would not give an extra-judicial opinion upon a question which might afterward come before them for judicial decision; for if they should express the opinion that the bill is constitutional, as they doubtless would if they should consent to act in the matter, and the bill should thereupon become a law, that opinion might rise up to vex them at some future time, when a litigant should come asking for an adjudication of his rights under the statute. They would then find that they had prejudged his case upon a bare abstract proposition, and would consequently be unable to bring to the consideration of the particular matter that fair, unbiased judgment which every litigant is entitled to, in theory, at least, from all our tribunals. The Supreme Court of Massachusetts was very recently required by a resolution of the State House of Representatives to give an opinion as to the proper construction of a public statute then actually in force, and declined to do so for reasons given in their reply from which the following extract is taken:

'The reasons are well stated in an opinion of the justices heretofore given to the house of representatives: As we have no means in such case of summoning the parties adversely interested before us, or of inquiring in a judicial course of proceeding into the facts upon which the controverted right depends, nor of hearing counsel to set forth and vindicate their respective views of the law, such an opinion, without notice to the parties, would be contrary to the plain dictates of justice, if such an opinion could be considered as having the force of a judgment, binding on the rights of parties.

'These remarks are of especial force where our opinion is asked as to the construction of a statute, the violation of which exposes the citizen to a penalty. Although such an opinion has not the force of an adjudication, yet it is, in a sense, a prejudgment of the question proposed, and would usually be followed by the subordinate judicial officers of the commonwealth; and any inhabitant interested in the question might well feel that his rights has been impaired by it without giving him an opportunity to be heard.'

See 148 Massachusetts Reports, page 623.

Our Court of Appeals would doubtless take equally high ground in case the resolution should pass.

Second. If the Legislature should adopt the resolution and the judges should act upon it, their opinion would be entirely without weight as a judicial decision. It would only be the opinion of the judges as lawyers, and entitled to no more consideration than the opinion of the same number of equally good lawyers in private station. The decision of a court of last resort establishes the law of the case. Inferior courts are bound to take such a decision as their guide in similar matters. The court itself which rendered it must, in theory at least, and nearly always does in practice, stand by the principle of law which it has applied, even although the opinions of the individual judges upon the question may afterward undergo a complete change. But an opinion given in the manner contemplated by the resolution binds neither the court nor the judges. In short, it would not become an integral part of the law, and could never be considered as authority.

Third. The Legislature is not in doubt about the matter. The Senate and Assembly have already expressed their firm belief that the bill does not, in any way, conflict with the Constitution. They have acted upon that belief and passed the measure. Should they now intimate a doubt they do not feel, and call in question the wisdom of their own deliberate action? The Governor wishes the opinion of the court as a guide to his own feet. He asserts his belief that the bill is unconstitutional, and states that his conviction is 'deep-seated and controlling;' at the same time intimating that he is willing to surrender his own convictions to the extra judicial opinion of the judges. If he really desires this opinion, why does he not make an effort to obtain it? The only precedent cited in this message is in favor of that course. In 1872, Chief Justice Church wrote an informal note to Governor Hoffman, giving the opinion of himself and the other judges upon a bill then in the Governor's hands. But this opinion was given not upon the request of the Legislature, but at the request of the Governor himself. If the present Chief Executive of the State wants to know what the judges of the Court of Appeals think of the bill in question, why does he not follow the example of his predecessor?

Fourth. The precedent would be a very dangerous one. We have seen that the judges once responded to such a request on the part of the Governor. That is now cited as a precedent for a similar request by the Legislature. Should the Houses adopt the resolution they would not only strengthen the former precedent, but, to a certain extent establish still another; and if the judges should respond as they did, very unwisely we think, in the former case, there would henceforth be an inclination both on the part of the Governor and of the Legislature to apply for the opinion of the court on matters of pending legislation. When we recall the fact that upon many of the measures before the Legislature the members are divided by party lines, and that the Governor sometimes belongs to one political organization while the majority of the Legislature represent another, we can realize to some extent what an important and mischievous part the judges might be required to play in the strife of partisans, if such a precedent should be fully established.

Fifth. The bill referred to in the resolution is regarded by a large body of our fellow citizens, and justly so in our opinion, as the most important measure that has been before the Legislature during the present session. It seeks to accomplish a vital and urgent reform. The people generally believe it will be efficacious in suppressing or at least diminishing certain monstrous evils that threaten the stability of our institutions, and demand that it shall be placed upon the statute books. The fate of such a measure ought not to be determined lightly, or without due sense of responsibility. An adverse opinion by the judges would practically settle the fate of a system which promises the greatest benefit to the State and to the people. The necessary amendment to the Constitution could not be made for several years and might not be made at all. Under such circumstances the friends of the measure naturally think that a decision on which so much depends ought not to be made in the informal, hasty, hap-hazard way suggested by the resolution. The question ought to be regularly presented to the court. Then the judges would feel the full responsibility of their oath and their office. It ought to be presented, if at all, in an action brought between parties to determine individual rights. Then the court would certainly be governed solely by a high and solemn sense of duty. We have the utmost confidence in our Court of Appeals. Its judges are not only learned lawyers, but fair-minded, honorable men. They have always been remarkably free from personal or party influences. But that is because they have always been called upon to decide in concrete cases between man and man. We ought never to place before them a question which has become an issue between two great parties and permit them to determine it as an abstract proposition entirely outside any duty devolved upon them by their high office. In such a case they might exhibit as much human nature as do those who dwell in a less sublimated atmosphere.

Furthermore, when a question of such paramount importance to the people is to be decided, there ought to be the largest opportunity for a proper presentment of the case in all its aspects, and abundant time on the part of the court for careful and patient consideration. The suggestion contained in the message is that the court, which is to convene sometime after March twenty-fifth, is to render its decision on or before the second day of April, at which last named date the Governor must either sign or veto the bill. This great question should, therefore, according to the Governor's views, be submitted without argument to a court that is not only to act without authority, but is to decide without deliberation. We do not think that is the proper way to reach a wise conclusion in a matter involving such large and far-reaching consequences.

We may add that if the particular provision which the Governor thinks is unconstitutional should be so declared by the courts in an action or proceeding duly brought between individuals for that purpose, such a decision would not, in our judgment, affect the validity of an election held in the manner prescribed by the bill.

Sixth. We are satisfied that leaving out all other considerations, the scheme proposed by the resolution is entirely impracticable. Both divisions of the court had adjourned until April fourteenth, before the message was transmitted to the Legislature. We are not aware of any power that can call them together before that date. The members had, at the time the resolution was offered, scattered far and wide; some to enjoy a much-needed rest, others to continue, at their homes, their labors in the line of duty. They certainly could not have been brought together by April second, even if they had consented to act. When together there would, perhaps, be various opinions upon the question, which could be harmonized, if at all, only by long and patient discussion. The result would be that, even if they could ultimately unite upon an opinion, which is extremely doubtful, the result of their labors would not be given to the Legislature for weeks to come. In the meantime the bill would have to be recalled from the Governor with little prospect that it would get back into his hands before the close of the session.

The Governor must have felt that it would be entirely safe for him to make such a recommendation. He could not have believed for a moment that the Legislature would act upon it. He understood that the court had adjourned and had every reason to believe that it could not again be convened in time to give an opinion by the day named in the message. He must have entertained grave doubts as to whether the judges would act in the matter; and he knew that if they should conclude to follow the precedent of 1872, they would give their opinion at *his* request rather than at the request of the Legislature.

We wish, in conclusion, to express our belief that the resolution was designed solely as a means of diverting public attention from the real issue between the friends and enemies of the bill in question."

For the correspondence between Governor Hoffman and the Judges of the Court of Appeals referred to in Governor Hill's special message of March 25, and also in the foregoing report, see 1872, special message of February 12, *ante,* vol. 6, p. 429, vetoing a bill for the protection of taxpayers.

See also Governor Jay's special message, March 28, 1801, *ante,* vol. 2, p. 479, containing the correspondence between himself and the chancellor and judges of the Supreme Court, in which they decline the Governor's request for an opinion as to the construction of section 23 of the Constitution of 1777, relative to the powers of the Council of Appointment, saying that they could not comply with the Governor's request "inasmuch as any opinion from us on the question, unless in a judicial procedure or in the council of revision, considered as a means to declare, and thereby establishing the sense in which the Constitution ought to be received and observed, would be without effect." Continuing the Chancellor and Judges say: "We cannot, therefore, view the present as one of the cases (for we will not pronounce there cannot be any) in which the Governor may require the advice of the Chancellor and Judges of the Supreme Court on the laws and Constitution, in the execution of his office."

1891. JANUARY 6. LEGISLATURE, ONE HUNDRED AND FOURTEENTH SESSION.

DAVID B. HILL, Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 6, 1891.

TO THE LEGISLATURE.— In entering upon the seventh and last year of my service as chief Executive of the State,* I will not affect to conceal my gratification at the fact that for the first time during the past seven years the popular branch of the Legislature is in political accord with the Executive.

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* Governor Hill was elected United States Senator at a joint meeting of the Senate and Assembly held on the 21st of January, 1891. The Senate had nominated William M. Evarts, the outgoing Senator, who received 19 votes, and Governor Hill 13. In the Assembly Governor Hill received 68 votes, and Mr. Evarts, 60. On joint ballot the vote was 81 for Governor Hill and 79 for Mr. Evarts. Governor Hill was chosen Senator for the full term of six years, beginning March 4, 1891. He continued in office as Governor until the end of his term, which expired on the 31st of December, 1891.

I congratulate you and the people of the State that notwithstanding the existence of an unfair and unjust apportionment the popular voice has at last found expression in the selection of one house of the Legislature which is in harmony with the sentiments of a majority of the people.

While it is true that one body alone can not enact the legislation demanded by the public interests, yet it is believed that the potent influence of the recent popular verdict is such that the whole Legislature will now be inclined to respect the popular wishes which have been so emphatically manifested and heretofore so long disregarded.

The measures which the people require are well understood. Foremost among them is the proposition for an enumeration of the inhabitants of the State in conformity with the express requirements of the Constitution.[a]

AN ENUMERATION DEMANDED.

An enumeration is necessary for the purpose of basing thereon a reapportionment of the Senate and Assembly districts.[b] The federal census of 1890, defective as it is generally believed to be, demonstrates clearly the injustice of the present apportionment. That apportionment was based on an enumeration taken fifteen years ago, and since then the population of the State, according to the federal bureau's count, has increased more than 1,300,000. Nearly one-fourth of the inhabitants of the State have been denied just representation by the Legislature's persistent refusal to authorize a new enumeration. The federal figures show, incomplete as they are, that there have been in the last fifteen years radical changes in the relative number of inhabitants in various localities of the State. In the cities of New York and Brooklyn the increase of population is at least 800,000, while most of the other cities of the State have grown proportionately. Yet 85,000 people in St. Lawrence county are represented in the Assembly by three members, while nearly eighteen times as many in New York, and ten times as many in Brooklyn, continue under the present apportionment to be represented by only eight and four times as many members respectively. Under a fair apportionment, based on an accurate enumeration, New York would be entitled to thirty-three or thirty-four members of Assembly instead of twenty-four, and Kings county would have seventeen members instead of twelve. In the Senate, the section of the State below the Harlem river would be represented by fourteen Senators instead of eleven. It is a flagrant wrong longer to deny a fair representation to cities which pay more than half of the State taxes.

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[a] Const. 1846, art. 3, § 4.

[b] Const. 1846, art. 3, §§ 4, 5.

Inequitable, however, as the federal census proves the present apportionment to be, it is believed that an accurate enumeration would show even more striking inequalities. Throughout the State there has been manifested a deep-seated mistrust of the accuracy of the federal count. It has been demonstrated quite clearly that in the city of New York alone nearly 200,000 inhabitants were overlooked. There is satisfactory evidence also of a deficiency in the returns for other parts of the State. An enumeration under State authority is demanded not only to correct the glaring inequalities of the existing apportionment, but the apparent inaccuracies of the federal census as well.

There need not be another census, but a simple enumeration of the inhabitants is all that is desirable and all that the Constitution absolutely requires. It seems to be now generally conceded, no matter how the matter may have been viewed in previous years, that a collection of statistics, other than a simple enumeration, would be a useless waste of public money and a wholly unnecessary procedure. The people desire and expect at this time a simple enumeration, and that is all. They have protested in unmistakable terms against the political injustice involved in the continuance of the present inequitable apportionment of the Senate and Assembly districts, and they desire to see the wrong speedily righted in the most inexpensive and simplest manner permitted by the Constitution.

In 1885 I suggested that the enumerators be appointed by the county clerks of the respective counties, expressing the opinion that such a course would be likely to secure more capable and efficient enumerators than if they were selected by the Secretary of State or other State officer, as the county clerks could have personal knowledge of the qualifications of most of their appointees in their respective counties;* and having had no reason to change my views upon this point since then, I desire at this time to reiterate that recommendation, asserting moreover, again, what I distinctly stated in that year, "that any bill providing for an enumeration of the inhabitants of the State — and for that enumeration only — will be permitted to become a law, no matter by what methods or under the supervision of what officer the enumeration is to be taken."

The duty of the Legislature is plain. It should provide for the taking of an enumeration, to the end that a fair and just apportionment may follow in due time. That duty cannot be neglected or evaded without a violation of the official oaths of those who perpetrate the wrong. It should be faithfully performed regardless of political or other irrelevant considerations.

A decent respect for public opinion, repeatedly manifested upon this question, the conscientious desire which may be assumed to exist on the part of the people's representatives to faithfully discharge a public duty, and the interests of the growing sections of the State, all unite in demanding that the constitutional obligation be performed.[1]

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[1] An enumeration was taken in February, 1892, under an act passed that year, chapter 5, and an apportionment act, chap. 397, was passed, at an extraordinary session of the Legislature which convened on the 25th of April, 1892. This act was sustained in People ex rel. Carter v. Rice (1892), 135 N. Y. 473.

* *Ante*, p. 42.

A JUST AND REASONABLE EXCISE LAW.

The necessity for a revision of existing excise laws has been repeatedly demonstrated. It was in 1857 — over thirty years ago — when the present partial or imperfect general excise law now in force was enacted. Since that date our population has enormously increased so that it is now about two-thirds greater than then, and with this increasing population, tending more and more to concentration in our large cities and populous towns and villages, inevitable and decided changes have come in the conditions under which the excise laws must be administered. Numerous innovations have been wrought in the customs, as well as the opinions of the people during that long period. Restraints and regulations then enforceable are not now effective or sufficient. Many restrictions and methods of procedure then adopted are not now desirable. Provisions then applicable are not now appropriate or suited to large bodies of our most industrious and respectable citizens.

In the effort to meet the demands of these changed conditions, habits and opinions of our people, numerous statutes have been enacted from time to time as additions to the general law of 1857, some of which, however, are independent acts, some are supplementary, others are amendatory and of many the provisions are obscure, as well as conflicting, requiring much judicial interpretation to reconcile and understand them.

The remedy is plain, and was concisely stated several years ago by one of my distinguished predecessors in the following language:* "What is needed is to substitute for all existing laws on the subject a carefully prepared statute, reasonable in its limitations and restraints, clear and explicit in all its provisions, and, above all, complete in itself; to be uniformly, steadily and constantly enforced."

The provisions of such a general law should be fair, plain and concise, and so framed as to be capable of being easily understood, especially by those who are expected to obey it and who are so largely affected by its privileges and penalties.

**Ante*, vol. 7, p. 164. Governor Robinson, vol. 7, p. 164.

It should be one symmetrical and comprehensive act, applicable to the whole State, just in its discriminations, devoid of favoritism, liberal in its provisions, strict in its penalties, and responsive to the popular demands, but neither in advance of public sentiment on the one hand, nor lagging behind it on the other. The revenues to be derived from licenses should not be paid to the State, but should belong to the local treasuries of the particular localities under whose authority the licenses are granted, to be applied in reduction of local taxation.*

It is believed that the people are opposed to oppressive sumptuary laws, and in the contemplated revision the aim should be to afford to the individual citizen the largest liberty consistent with good order and the public safety, while at the same time not offending the moral sense of the community, but seeking to mitigate and suppress the conceded evils of intemperance. The fact that with the exception of a very few localities the amounts now charged for licenses throughout the State do not exceed one-third of the sums authorized to be charged under existing laws, may be accepted as some evidence of local sentiment upon that question, and may properly be considered in determining the propriety or necessity of increasing the maximum and minimum sums which should be authorized in whatever modifications of existing laws may be proposed.

Any further expression of my views as to the general principles which should govern and the details which should be embraced in the needed excise legislation, are regarded as unnecessary at this time, because they have been fully indicated in the various communications upon this subject transmitted by me to previous Legislatures during the past five years, to which the present Legislature is respectfully referred.[2]

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* As to the distribution of excise moneys, see the liquor tax law of 1896, chapter 112, under which one-third of the net revenues received under the law were payable to the State Treasurer, and the other two-thirds to the proper fiscal officer of the city or town where the traffic was to be carried on. This act was amended in 1903 by chapter 486, which divided excise revenues equally between the State and the locality.

THE PROHIBITION AMENDMENT.

Two Legislatures having passed the prohibition amendment, it must now be submitted to the people agreeably to the provisions of the Constitution.[c] It is the clear duty of the Legislature to provide for its submission. It is immaterial whether the amendment itself was wisely or unwisely passed by previous Legislatures, or whether it would meet the approval of the present Legislature if the question were presented to it on its original merits. The good faith or propriety of its passage in other years cannot be properly considered now. The fact that it has heretofore been passed by a majority who really do not believe in prohibition and who supported it in the Legislature as a matter of political expediency rather than upon principle and who do not themselves intend to support it at the polls, is an irrelevant matter which only affects the sincerity of its support and does not relieve the present Legislature from the performance of what is conceived to be its sacred constitutional obligation to duly provide for the amendment's submission.

It should be stated that the action of the last Legislature in not itself providing *by statute* for the submission of the amendment to the people either at the last or the next annual election, and particularly in declaring by a concurrent resolution that the amendment should be submitted at a *special* election to be held on the second Tuesday of April, 1891, without passing any law providing for the means or prescribing the method, manner and other details of such submission, has somewhat complicated the situation and rendered your duty a delicate and embarrassing one.

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[2] A revised excise law was passed in 1892, chapter 401. See also Liquor Tax Law of 1896, chapter 112.

[c] Const. 1846, art. 13, § 1.

Whether the last Legislature could legally call a special election by a joint resolution and not by a statute, and whether such an election can legally be held in the absence of further legislation, are serious questions which ought not to surround so important a matter.

It may be safely asserted that the people of the State did not and do not want this amendment submitted at any special election, but prefer that it should take the usual course and be passed upon at the next annual election. This is desirable in the first place, because the second Tuesday of April is an inopportune time and consequently not satisfactory, and in the second place, because the interests of economy would be promoted thereby. It is estimated by the Secretary of State that a special election would cost the taxpayers of this State, under our present election laws, the sum of $629,000, which enormous expense ought certainly to be avoided, if possible, to say nothing of the inconvenience and annoyance to the electors themselves.

It is believed that after a careful investigation of the questions of law and propriety involved, to which your attention is invited, it will be apparent that additional legislation is desirable as well as absolutely required, and that the most feasible and wisest course to be pursued is the speedy enactment of a proper law containing the necessary provisions for the due submission of the amendment at the next annual election.[3]

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[3] **A bill providing for the submission of the prohibition amendment was passed in the Assembly, but failed in the Senate. See 1890, note 11, *ante*, p. 923.**

THE JUDICIARY AMENDMENT.

Two Legislatures having duly passed an amendment to the judiciary article of the Constitution providing for the election of additional justices of the Supreme Court, it will be the duty of the present Legislature to provide by suitable legislation for its submission to the people.

The last Legislature passed an act for that purpose, but it proved defective and failed to receive Executive approval, after the final adjournment of the Legislature, and hence another act becomes necessary at this time.

If, for any reason, no matter what, a constitutional obligation has been omitted, or has not been fully performed by one Legislature, it becomes the bounden duty of the next Legislature to perform it at the first opportunity.

Although it may be doubted whether the interests of the State really require this amendment at this time, and also whether it will be approved by the people at the polls, yet it having duly passed two previous Legislatures, the present Legislature has no other alternative under the Constitution,[d] except to duly provide for its submission, and permit the people to determine the matter for themselves.[4]

REFORM IN METHODS OF TAXATION.

The subject of taxation, always an interesting and important question, is one demanding your earnest attention, especially at this time.

The condition of the agricultural interests of the State, which are closely allied with its general prosperity and largely affected by any system of taxation, may appropriately be taken into consideration in determining what changes in present methods are most desirable.

It seems to be conceded that farming lands during recent years have largely decreased in value, and that the occupation of farming is gradually becoming less profitable than formerly; that the prices for farm products have been greatly and ruinously reduced; that wider and better markets, although much needed, are not forthcoming; that taxes are numerous and oppressive, as well as unequally distributed, and that a general depression seems to pervade nearly every agricultural interest.

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[d] Const. 1846, art. 13, § 1.

[4] The judiciary amendment was submitted in 1892, chapter 215, and rejected. See 1890, note 39, *ante*, p. 1033.

To alleviate or remedy these unfortunate conditions is the serious problem with which the people's representatives everywhere are confronted, and the solution of which requires the exhibition of the highest statesmanship. While you may be powerless to afford much assistance in mitigating many of these complaints, it is believed to be within your province to especially and materially aid the cause of agriculture in the reduction and equalization of the burdens of government, so far as State taxation is concerned, by the adoption of some wise and practical legislation which will relieve farming lands and real estate generally from longer bearing an undue proportion of taxes, and which will compel personal property to assume its just and reasonable share. This is not an easy task, but, nevertheless, the difficulties which embarrass it are not insurmountable. Too much should not be attempted or else the risk is encountered of accomplishing nothing. A few changes in the present system of taxation may appropriately be made at this time and then await the practical results of such innovations before determining whether more are desirable.

Thoughtful observers who have made the subjects of taxation and values their careful study for many years, estimate that the value of the personal property of our State nearly equals the value of its real estate. This view is largely confirmed by the repeated statements of our State Assessors and is further partially corroborated by the records of our clerks' offices and surrogates' courts as well as other accessible information. If, however, this estimate shall seem to be exaggerated, it may at least be safely asserted that the value of personal property exceeds seventy per cent. of the value of real estate, and that such fact would be amply established under a proper system of taxation.

Yet the assessment-rolls of the State under existing laws make a very different exhibit. According to the present assessment (the equalization of which was fixed in October last), the personal property in the State is valued at only $385,329,131, while the real estate is valued at $3,298,323,431, the personal property thus being assessed at only about one-eighth as much as the real estate.

It is evident that such a showing is an incorrect one and may be accounted for in part because of a lax administration of existing tax laws, but mainly because such laws are imperfect in themselves.

The manner in which assessments are to be made is fixed by the Revised Statutes, which provide that the taxable personal property owned by a person shall be taxed at its full value " after deducting the just debts owing by him."

This latter provision has existed without change or amendment ever since its first enactment in 1828, although its utility has often been seriously questioned. Every effort at modification has been stoutly and successfully resisted, notwithstanding it has been repeatedly proved that its existence furnishes the avenue through which personal property substantially escapes all taxation.

The facility with which taxation is evaded under the opportunities afforded by this clause furnishes a strong argument for its repeal.

It is urged with much force that this provision invites perjury, encourages fraud, establishes a wrong principle, prevents equality in taxation, and practically exempts personal property.

It is claimed that the true theory of taxation requires that the property of a person, and not the person himself, should be taxed, and that, therefore, the indebtedness of the owner is an immaterial matter, and furnishes no adequate excuse for the exemption of his property.

Under the operation of the present system, where fraud is so easily perpetrated and detection so difficult, it may well be said that the taxation of personal property is virtually left to the conscience of its owner. This presents an unsatisfactory condition of affairs, and leads to the suggestion that some reform is needed in our tax laws.

Real estate now bears about eighty-nine per cent of our direct State taxation, and the injustice of this situation is so apparent that it is believed the Legislature can not longer refuse to provide some relief.

The present system of taxation is regarded not only as inequitable, but as inconsistent.

While it permits the amount of the indebtedness of an owner of personal property to be deducted from his assessment, no such reduction is permitted to the owner of real estate, even though his indebtedness may be represented by a mortgage, judgment, incumbrance or other specific lien upon such real estate. It is difficult to defend so unreasonable and unfair a proposition. The effect of this situation is that the statute in theory authorizes or permits a double taxation.

If it be proper to allow the owner of personal property a reduction in his assessment on account of his indebtedness, it would seem proper that the same course should be pursued in regard to real estate to the extent of permitting the owner thereof to have deducted from his assessment the amount of any mortgage, judgment, or other specific lien or incumbrance upon his real estate. There would seem to be no good answer to this suggestion. Tax laws like all other laws should be consistent in themselves.

If it be asserted that real estate should continue to be taxed at full value without regard to the actual interest of the owner in it because otherwise fictitious mortgages and other fictitious liens might be created whereby taxation might be evaded, it may be answered that the same if not a better opportunity for fraud and evasion exists in reference to personal property in the creation of fictitious indebtedness upon which to claim a similar reduction of taxation.

I believe in the just and equitable doctrine that real and personal property should be placed upon an equal footing for all purposes of taxation.

Whatever rule is adopted should be applied without unjust discrimination. Either the question of indebtedness should be eliminated entirely from the matter of taxation of property, or else all taxable property should be treated alike in respect to such indebtedness.

The operation of the present system does not produce satisfactory results, in that personal property, either by reason of the provision allowing a reduction for indebtedness or otherwise, largely escapes taxation, while the burdens upon real estate are consequently increased. There has been an immense shrinkage in the assessed valuation of personal estate during the past twenty years. In 1871 such valuation amounted to over $452,000,000, while the present valuation is only about $385,000,000, a decrease of over $67,000,000. With the vast increase of population, resources, wealth, and all the material interests of the State which has occurred during the past twenty years, it is not possible that the actual accumulation of personal estate has not kept pace with the march of progress which has included everything else in its onward movement.

The proposition for the equalization of the burdens of taxation here presented affects not only every farm, but every store, workshop, manufactory, and home in the State, and while inviting the most careful scrutiny of its merits, it is respectfully submitted that it is at least worthy of a fair trial.

A PROBATE AND SUCCESSION TAX.

If, however, the Legislature in its wisdom shall hesitate to adopt the radical changes hereinbefore outlined, another method of reaching personal property for the purpose of taxation may be found in the plan of a graduated probate and succession tax upon the personal property of decedents.

Nearly all such estates are carefully appraised by impartial officials selected by our surrogate courts, and upon such appraisal the personal estate can at least be subjected to one tax, although it may never have been able to be reached during the life of the decedent. A system can easily be devised absolutely requiring all estates of decedents over a certain valuation to be administered in a surrogate's court, to the extent of obtaining an appraisal of the personal property thereof, and after allowing reasonable exemptions to the immediate next of kin, a fair percentage tax may be imposed upon the remainder, collectible in the surrogate's court, and reasonably graduated according to the value of the estate. The theory of such a graduated percentage tax seems fair and just, especially in view of the fact that personal property, under existing methods, nearly entirely escapes taxation during the life of its owner. A similar system is in operation in England, and I am advised that it works satisfactorily, and the propriety of its adoption here is suggested for your consideration.[5]

MARRIAGE AND DIVORCE.

The Legislature at its last session passed an act (chapter 205 of the Laws of 1890) authorizing the Governor, by and with the advice and consent of the Senate, to appoint three commissioners to promote uniformity of legislation in the United States on certain subjects, particularly the laws relating to marriage and divorce; and in pursuance thereof, three able and well-known lawyers, viz: Henry R. Beekman and William L. Snyder, of New York, and Irving Browne, of Albany, were duly appointed and confirmed, who are now engaged in the discharge of their important duties, and are expected to make a preliminary report to the Legislature at its present session embodying such recommendations as they believe to be desirable to facilitate the excellent objects sought to be accomplished. I bespeak for their report that careful study which the character of the subject justly demands.[6]

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[5] Chapter 215, approved April 20, exempted from taxation under the collateral tax law personal property valued at $10,000 or less passing to specified members of the decedent's family, but property above that amount was to be taxed at the rate of 1 per cent. See memorandum under date of April 20, accompanying the foregoing act; also 1890, note 13, *ante*, p. 928.

IMPROVEMENT OF COUNTRY ROADS.

I renew my previous recommendations with reference to the improvement of country roads. While the suggestions upon this subject made in my annual message a year ago seemed to meet popular approval very generally throughout the State, they were misapprehended by some persons, who appeared to have inferred that the plan, as presented, involved the assumption by the State of control over the highways, or the heavy bonding of counties for the construction of new roads and improvements.

No such implication was intended to be conveyed in the recommendations. The plan suggested involved merely the construction at State expense and under State supervision of two highways running transversely through each county, intersecting in about the middle of the county or at its principal place, and so connected as to form a network of well-built roads through the State. It was not intended that the State should assume greater responsibility than this, but it was believed that to this extent the matter of road improvement was one of State importance—adding largely to the wealth and attractiveness of the State, as it would, by bringing agricultural lands into easier and closer access to the towns, enhancing the value of rural property, and attracting, especially in the summer months, large numbers of strangers to the State. I am as much opposed as any one can be to the assumption by the State of any unnecessary powers or responsibilities, but the initiative of so great an undertaking as the systematic and scientific improvement of our highways must be taken by the State, or no genuine and general reform can be accomplished. The best individual efforts must necessarily be local and spasmodic.

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[6] The report of the commission on uniform laws was presented to the Legislature on the 27th of April. Assembly Document, No. 82. See also 1890, note 17, *ante*, p. 929.

The construction by the State, under the supervision and direction, for instance, of the State Engineer, of two scientifically built roads in each county, so that a person could start from New York, or Buffalo, or Albany, or any other place, and travel with speed and comfort through every county in the State without leaving the State roads, would be of incalculable benefit to the State at large, as well as to separate localities. The State roads would serve as object lessons in each county, stimulating local authorities to the improvement of other highways by presenting examples of substantial construction, and by illustrating the material advantages which accompany ready and satisfactory means of communication. Except in the case of these two State roads, local control would be as complete as it is now.

I need not remind you of the present disgraceful condition of our highways. For a great part of the year many of them are almost, if not quite, impassable. They are, as a rule, inferior to those in other States, especially in New England, and they are said to compare most unfavorably with those of England and the Continent. The fault has been in ignorance of construction, in lack of responsibility and in waste of energy and money in maintenance. Sooner or later our State must begin a systematic attempt at improvement, or our farming lands will depreciate still further in value, and other States will attract the wealth and population to which our resources and natural advantages entitle us. The cost of such a system of highways as I have outlined would be great, and their completion would require many years, but no better time for inaugurating the system will probably come than the present. There is now, practically, no State debt, and should it be deemed best to incur one for this purpose by a vote of the people, the slight increase in taxation would be more than compensated by the increase in material benefits. It should not be forgotten, also, that when once proper roads are constructed the cost of maintenance, according to the testimony of competent engineers, is comparatively slight, while with but little care the roads will last for generations.

I commend this subject to your serious attention. A bill incorporating the Executive's suggestions and commonly known as the Richardson bill, was introduced in the Senate last year, but failed to receive the requisite number of votes for passage. It is hoped that the measure may receive closer scrutiny this year and that the Legislature will not refuse to co-operate in securing for the people of the State the benefits of this great public improvement.[7]

RAPID TRANSIT IN NEW YORK.

The need of legislative action to facilitate the acquirement of means of rapid transit in the city of New York becomes more imperative each year. Such action can not longer be deferred without seriously retarding the city's growth and prosperity.

As to the general nature of the legislation required there is now practically no controversy. Such differences as have heretofore existed were substantially reconciled at the last session of the Legislature. A rapid transit bill failed of enactment at that session solely because the majority of one branch of the Legislature refused to accept in the measure the salutary principle of home rule in the appointment of a commission. It is to be hoped that no such short-sighted impulse will again be the means of depriving the people of New York from much-needed facilities for local transit. In a matter so distinctively of local concern and importance as the laying-out of transit routes and the supervision of transit methods, the local authorities, by themselves or officers of their selection, should be invested with the control and responsibility. To deny them that right is to deny self-government to the chief city of the State. Much as the people of New York desire rapid transit, they do not desire it, in my opinion, as the price for the surrender of the principle of home rule. Their earnest devotion to the maintenance of this principle was manifested during the controversy over the so-called world's fair bill last spring and compelled finally its recognition by the Legislature, although the desperate effort to defeat that principle provoked and prolonged an unfortunate contest which concededly lost New York the World's Fair. In view of recent events, however, it is not believed that any further serious opposition to this principle will now be manifested.[8]

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[7] As to good roads, see 1890, *ante*, p. 1041.

THE INTERESTS OF LABOR.

During the labor difficulties arising out of the strike of certain of the employes of the New York Central and Hudson River Railroad Company last summer, there were developed two defects or omissions in the statutes of our State to which the careful attention of the Legislature is directed, one relating to the arbitration of labor disputes, and the other concerning the employment of private detectives.

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[8] Rapid transit was provided for by chapter 4. See Governor's memorandum on approval of bill January 31.

The statute creating the Board of Arbitration and Mediation, which provides for the amicable adjustment of labor controversies, contemplates that the functions of the Board shall only be invoked by the voluntary action of both of the parties to the dispute. Either party may decline to accept the intervention of the Board, and for such refusal there is no remedy or penalty prescribed. The theory of the statute seems to be that the State simply creates a fair and impartial standing tribunal which is always at hand, and to which the parties to a labor controversy are at liberty, without any expense to themselves, to voluntarily submit their differences for amicable adjustment; but no method of compelling such submission is provided.

This is probably all that can be accomplished by legislation to facilitate the arbitration of such controversies as between individuals, but as between corporations and their employes it is believed to be possible, as well as feasible, to enlarge the scope of the existing statute by making such arbitrations compulsory.

Corporations are the creatures of the law, and their management and actions, as well as the conduct and relations of their employes, can, to a large extent, be regulated by statute, and the enforcement of arbitration practically controlled thereby.

The matter is not free from legal difficulties, but it is believed that the object sought can be accomplished by a carefully framed statute, wherein the rights of all parties may be protected.

The desirability of compulsory arbitration in such cases, if the same can be successfully secured, is a subject which invites discussion, and is worthy of your careful attention.

There is no express statute in our State which prohibits or regulates the employment of private detectives during labor strikes. On such occasions, employers, whether they are corporations or individuals, have a lawful right under existing laws, to employ "Pinkerton's Detectives," or any other detectives, persons or organizations, even though armed, uniformed and organized, and no matter where their residence may be, to assist in the preservation, protection and keeping possession of their property; and this right is not affected by the fact that neither the State authorities nor local officials have any direct control over the actions of such detectives. This is the law, and the desirability of its modification is the question suggested.

It is alleged that experience has demonstrated that the use of the services of such detectives at such times becomes naturally a source of irritation and inevitably provokes violence and disturbance which otherwise would not occur. It is claimed that many of such detectives are desperate characters who seek such employment from mercenary motives mainly and because of the notoriety and excitement which it affords, and who are usually imported from distant States by the organization which employs them, and that the arming, during times of great excitement, of such an organized body of irresponsible men, who recognize no official accountability and who are not under the control of any public official, but act under the sole direction of their chief, may well be deemed a source of danger to the peace and good order of society. It is true that such detectives are liable like all other persons for any infraction of the law, including unnecessary violence, which they may commit, but being generally strangers and uniformed, the difficulty of their identification and detection where disturbances occur usually operates to defeat justice and renders their employment more odious to the people. It is contended by many good citizens that the protection of property and the preservation of the peace in such emergencies may always more safely be intrusted to the constable, the policeman, the sheriff or other public official, and if these instruments prove inadequate, then the reputable citizens constituting the *posse comitatus* of the county, and ultimately to the military if necessary, rather than that resort should be had to an organized, armed, uniformed, unofficial body of non-residents. Private detective organizations are comparatively modern institutions, and it is urged with much force that in the absence of existing laws upon the subject, it is the true province as well as the duty of the State, through its Legislature, either to prohibit the employment or to define the functions, regulate the duties and restrict the powers of such organizations.

In framing such a remedial statute, care should be exercised not to unnecessarily infringe upon the inherent rights of citizens and property-owners, but while relieving the people from the abuses now complained of, the just prerogatives of all classes should be recognized and respected.

CONTESTED ELECTIONS.

I had the honor at the last session of the Legislature to suggest, in a special message, an amendment to our Constitution, whereby the determination of contested elections of members of the Legislature might be vested in the courts rather than in the Legislature itself, and I recommended further such action by the Legislature as would be likely to bring the subject to the attention of Congress, with a view to securing ultimately a similar amendment to the Federal Constitution. Such a transfer of jurisdiction, I believe, had not been previously suggested by any public officer in the United States, and whether on account of the novelty of the suggestion or a disapproval of it, the recommendation remained unacted upon at the adjournment of the Legislature. At the time it was made, however, it was generally supported by the public press, and since then the idea, so far as it related to members of Congress, has received the strong indorsement of the distinguished Speaker of the Federal House of Representatives,* in a magazine article published during the past summer.

Legislative bodies are often loth to relinquish any of their privileges, but the determination of contested elections of their members has become so much a matter of partisanship that wise statesmanship and a sense of justice would demand its transfer to a fairer tribunal. In the case of all other offices we bestow jurisdiction in contested elections upon the courts, but in legislative offices we make each house the judge of the returns, qualifications and elections of its own members, and in so doing we have opened the door to grave abuses of power — resulting sometimes in seriously nullifying the popular will and almost always in a denial of justice to rightfully elected members. A political majority usually exhibits judicial qualities only when it is large enough to be generous. Otherwise it is apt to decide election cases not upon their merits, but according to party necessities. Such practices bring our legislative bodies into disrepute and tend to promote political demoralization. In Great Britain the scandals attending the tyrannical exercise of this power by the House of Commons resulted in a surrender of the prerogative in 1868, and recent abuses of it in our own country emphasize the necessity of a speedy transfer of jurisdiction in federal and State governments here.

I therefore renew my suggestion for the passage of a concurrent resolution submitting to the people an amendment to the State Constitution which will confer upon the courts the exclusive authority to decide the elections of members of the Legislature. Our State would do well also in taking the lead to bring about a similar change in the federal Constitution. Contests for legislative offices would then, under such a modified system of adjudication, be upon the same plane with contests for other offices. A certificate of election would entitle the holder to retain his seat in the Legislature until ousted by the judgment of a competent court. I do not fear that the judiciary would be influenced by partisan motives, and the net result would be in my opinion a distinct gain in the direction of the impartial determination of election cases.[9]

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* Thomas B. Reed, in an article on "Contested Elections" in The North American Review, July, 1890.

CHICKAMAUGA AND CHATTANOOGA NATIONAL MILITARY PARK.

The Congress of the United States has provided for purchasing the battlefield of Chickamauga, and obtaining the roads along Missionary ridge and over Lookout mountain, and establishing thereon a national military park. The State of Georgia has ceded to the United States full jurisdiction over the Chickamauga field, and the authorities of Tennessee have ceded the roads already mentioned.

New York was largely represented on these remote fields in the storming armies which carried Lookout mountain and Missionary ridge. Twenty New York organizations took part in these operations.

A national commission is now engaged in preparing historical tablets to mark all the lines of battle on both fields. The act establishing the park authorizes the States which had troops in these campaigns to erect monuments upon the government grounds to honor their fighting.

New York has already made most liberal provision for commemorating the deeds of her sons at Gettysburg. I recommend that like action be taken by the State, through the necessary legislation, to preserve the history of New York troops on these celebrated fields about Chattanooga.[10]

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[9] An amendment embodying the Governor's suggestion as to contested elections was adopted at this session and again in 1892, at which time it was submitted to the people and rejected. See 1890, note 35, *ante*, p. 982.

[10] In 1893, by chapter 726 (the supply bill), the Governor was authorized to appoint three commissioners to ascertain and mark the positions occupied by each regiment, battery and independent organization from this State

THE WORLD'S FAIR.

Federal legislation having authorized the scheme of a great World's Fair in 1893, and Chicago having been selected as the city in which the fair shall be held, it becomes the duty of each State in the Union to assist, so far as it may be able, in contributing to the success of this national undertaking. The State of New York with its commanding position in the list of States and its unlimited resources, ought not to be behind any other State in the variety and extent of its representation. I recommend such legislation and liberal action as may be deemed necessary to facilitate a proper exhibition of the State's resources and to enable the State to participate with dignity in the great exposition.[11]

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engaged in the battle of Chickamauga or Chattanooga in co-operation with the National Commission. The act appropriated $3,000 for traveling and other necessary expenses of the commissioners.

An act passed in 1894, chapter 371, authorized the commission to erect monuments, memorial structures or markers on the battle fields of Wauhatchie, Lookout Mountain, Missionary Ridge, Tennessee, and Ringgold, Georgia, or about Chattanooga, Tennessee, to each of the regiments and batteries of the State named in the act, and engaged in those battles, at an expense not to exceed $2,000 for each regiment or battery, monument, memorials and markers on the separate and distinct fields. The act contained detailed provisions relative to the powers and duties of the commissioners, and prescribed regulations for carrying the act into effect. The act appropriated $34,000.

An act passed in 1895, chapter 857, made further appropriations amounting to $83,000, and provided for a New York State Central Historical Memorial upon a suitable site on the battle field in the vicinity of Chattanooga, Tennessee.

By chapter 317, L. 1895, the Chattanooga commission and the Gettysburg commission were consolidated in one commission to be known as the New York commission for the battle fields of Gettysburg and Chattanooga.

Several statutes were subsequently passed making additional appropriations and providing for the administration of the trust devolved on the commission.

[11] As to the world's fair, see 1890, note 22, *ante*, p. 933. A world's fair commission was created in 1892, chapter 236.

OTHER RECOMMENDATIONS.

Certain recommendations contained in my previous messages may appropriately be renewed at this time. They are as follows:

First. A measure providing for an immediate constitutional convention.[12]

The basis of representation for such convention should be the latest enumeration, and for this purpose the recent federal census may be utilized, if it is deemed advisable to do so. There are no legal or constitutional objections to such a course.

Second. An act to provide for compulsory voting.[13]

This subject has not attracted the attention which it deserves, but it is hoped that public opinion may be aroused to its importance in the early future. It is a necessary measure to fittingly supplement the reform legislation recently enacted and designed to purify our elections. Some of the reasons for the inauguration of such a system were fully set forth in my annual message of 1889.

Third. A measure creating a State commission which shall include supervisory powers over gas, telegraph, electric lighting, and telephone companies, similar to the jurisdiction conferred upon the Board of Railroad Commissioners over the railroads of the State.[14]

The necessity for some such tribunal has been repeatedly demonstrated, but its establishment has thus far been defeated. Its creation, however, may be regarded as only a question of time.

Fourth. An amendment to the Weekly Payment Act of last year (chapter 388 of the Laws of 1890) applying its provisions to steam-surface railroads. Such railroads were exempted by that act, but it is believed that no adequate reasons exist for such discrimination.

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[12] A constitutional convention act was passed in 1892, chapter 398, which was amended in 1893, chapter 8. Delegates to the Convention were chosen at the general election in 1893, and the convention met in April, 1894. See 1887, note 12, *ante*, p. 311, and 1890, note 14, *ante*, p. 929.

[13] As to compulsory voting, see 1889, note 8, *ante*, p. 676.

[14] As to a State gas commission, see 1887, note 13, *ante*, p. 312.

It might be well enough to further amend the act by expressly declaring that its provisions were not intended to apply to officials of municipal corporations who receive stated salaries.*

Fifth. An amendment to the "Corrupt Practices Act" of last year (chapter 94 of the Laws of 1890), extending and applying its provisions to the committees of every political party. The propriety of a further amendment compelling the filing by candidates of an itemized verified statement of their expenditures in obtaining nominations, is also suggested.[15]

Sixth. A measure affording legal facilities whereby a successful candidate who can be proven to have obtained votes by bribery or other corrupt or illegal means on the part of himself, his agent or his political committees, may be ousted from office by proceedings in the nature of a "*quo warranto*" by the defeated candidate, and the latter given the office in his stead, provided it appears that neither the defeated candidate nor his committee has used any corrupt means to promote his election.

This would legitimately encourage prosecutions, as well as put a premium upon honest candidacy, and do more toward securing honest elections than all the mere ballot reform acts which can be devised. The system proposed is taken in its principal features from the "Corrupt Practices Act" of Great Britain, which has accomplished more for the purification of elections in that country than all other reform measures and agencies combined. Its value consists, among other things, in rendering large expenditures on the part of wealthy candidates extremely dangerous and unprofitable, and in holding out to honest candidates who are defeated, an inducement to expose the corruption of their adversaries by awarding to such honest candidates the offices sought irrespective of the question of the amount or extent of the corruption shown. This reform would tend to insure absolutely clean elections.

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* See 1890, note 18, *ante*, p. 930. The act of 1890, chap. 388, was amended in 1895, chap. 791, by requiring every steam surface railroad company to pay, on or before the twentieth day of each month, the wages due to its employees for the preceding calendar month. The subject of the payment of wages was included in the Labor Law of 1897, chap. 415, section 10.

[15] See 1890, note 9, *ante*, p. 918.

It is difficult to comprehend why the Legislature should hesitate to adopt the most valuable portion of the English "Corrupt Practices Act," while readily enacting some of its minor and less essential provisions.

Seventh. An act providing for the compulsory investigation of fires.

The arguments and figures showing the desirability of such a measure were set forth at large in my annual message of 1889.*

Eighth. An act abolishing the confirming power on the part of the Senate except where expressly authorized by the Constitution.

The abuses which have characterized the exercise of the confirming power during recent years were accurately recited, and the reasons for its abrogation concisely presented in my annual message of 1888.† Subsequent events have only rendered more perspicuous the soundness of the views then expressed.

Ninth. An act to provide for a special labor commission to suggest measures in the interest of labor.

That it is the prerogative of the Legislature to foster the interests, lighten the burdens, and add to the dignity of labor, in so far as the same can be done properly and legitimately, will not admit of dispute. It is difficult, however, to accomplish much in that direction without painstaking examination, without patiently listening to the complaints and carefully studying the wants of laboring men, a task for which the Legislature as a body is ill-adapted by reason especially of the brevity of the session, the haste with which legislative business is usually transacted, and the lack of opportunity to sufficiently deliberate upon the serious questions involved. It is believed that such a commission, composed in its majority of representative labor men and including some disinterested person skilled in the framing of statutes, who could hear the grievances and investigate the needs of employes, and intelligently prepare the necessary measures required in behalf of the laboring classes, would prevent the presentation of much imperfect and crude legislation and accomplish better results for the cause of labor as well as for that of good government.

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* *Ante*, p. 689.

† *Ante*, p. 487.

Tenth. An act abolishing the State Board of Charities and State Board of Health, and vesting their respective powers in single officers, thereby concentrating responsibility and improving the public service.

Eleventh. A measure providing for the inauguration of a system of manual training in our public schools. This topic was fully discussed in my annual message of 1887.[16]

Twelfth. A measure providing a comprehensive plan for the creation of a State park in the Adirondacks. The necessity and advantages of such legislation were fully set forth in a special message last year, to which the attention of the Legislature is respectfully directed.[17]

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[16] See *ante,* p. 322. As to manual training in schools, see 1888, note 8, *ante,* p. 483.

[17] As to the Adirondack Park, see 1890, note 24, *ante,* p. 938.

Finances.

The State debt has been reduced during the past fiscal year, by the payment of $100,000 Niagara reservation bonds, and $1,710,550 canal debt.

On the thirtieth day of September, 1890, the total funded debt was $4,964,304.87, classified as follows:

General fund (Indian annuities)	$122,694.87
Canal debt	4,341,610.00
Niagara reservation bonds	500,000.00
	$4,964,304.87
Aggregate sinking fund	3,163,722.49
Total debt unprovided for, but not yet due	$1,800,582.38

The tax rate for the current fiscal year, is two and thirty-four one-hundreths mills ($2\frac{34}{100}$), which on the present assessed valuation will yield $8,619,748.17. The reduced tax rate is occasioned by the fact that by reason of Executive disapproval (after the adjournment of the Legislature in 1889), of various appropriations, amounting in the aggregate to over one million eight hundred thousand dollars ($1,800,000), there was left a surplus of that amount in the treasury, which was utilized in 1890 in lessening the amount necessary to be raised for this fiscal year; and because of the further fact that the assessed valuation of taxable property had been increased by nearly one hundred million dollars since the previous year.

The amount received from notaries during the last fiscal year is the sum of $32,652.50. There has been received from the "Pool Tax," so-called, the sum of $22,371.25, and from the special tax on corporations the sum of $1,158,978.41, and from the Collateral Inheritance tax the sum of $1,117,637.70, and from the special tax on the organization of corporations the sum of $220,719.94.

DANGEROUS FEDERAL LEGISLATION.

There is pending in the Federal Congress a measure popularly designated with great accuracy as the "Force Bill," which is designed to extend federal control over congressional elections.

The terms of this proposed law I need not describe to you; they are familiar to the general public, because they were widely discussed in the recent political campaign, and formed one of the principal issues in the election. By an overwhelming majority the people decided against the measure. In our own State this emphatic protest was recorded in a majority of 70,000 votes against the candidates who ostensibly were committed to the bill's support. Yet, in spite of this indignant expression of adverse popular opinion, the friends of the measure are still urging its enactment, and pressing legislative business in the United States Senate is being ignored while, under spur of partisan goad, an effort is making to rush through this revolutionary measure.

In the defeat of that effort the State of New York and every other State in the Union has a vital interest. Ostensibly to promote pure elections, the measure in reality is an unworthy scheme to perpetuate partisan control. It is a dangerous step in the direction of centralized government. It is un-American and revolutionary. It is an unwarranted usurpation of the rights and privileges of States. It authorizes the employment of an army of federal officers and the expenditure of many millions of dollars. It practically annuls many State laws and places the determination of federal elections absolutely in the hands of partisan officers. The effect of its enactment and enforcement must inevitably be to infringe the sacred right of representation, to build up a powerful partisan machine dangerous at all times to the free expression of popular sentiment, to turn over the control of government to an oligarchy of office-holders, to excite conflict between State and federal authority, and to break down respect for law and reverence for our political institutions among the ignorant. In the South it would be the means of arousing race prejudices which would threaten the order and prosperity of those communities, and rekindle the dying embers of sectionalism.

Against legislation so hostile to the country's welfare, so subversive of its institutions, so foreboding to its peace and happiness, let this State, through the Legislature now assembled, vigorously assert its opposition. For a hundred years we have regulated our own congressional elections; is there any reason why we should not continue to regulate them? When defects have appeared in our election laws, whereby abuses prevailed, our Legislatures have corrected them, so that to-day we have an election law which men of all parties pronounce nearly perfect for securing the purity of the ballot. To a certain extent, the proposed federal legislation would destroy the safeguards of our State law, and offer opportunities for the intimidation and debauchery of voters. In other States the same conditions prevail, so that the plea of pure elections put forward in behalf of the Force Bill is shown to be false, and the measure finds no genuine support save as a partisan device. Many partisan acts in our country's history have been passed with no less ardent professions of pure intent than those which are heard now from the advocates of this iniquitous and tyrannical measure.

I urge the Legislature, by resolution or otherwise as may seem best, to express so emphatically its condemnation of the proposed legislation that the united voice of

New York's representatives in Congress may be secured to avert from the State and the country the evil effects of so unwise a law.[18]

CONCLUSION.

I can not conclude my last annual message to the Legislature without cordially acknowledging the willing cooperation and assistance which I have received during all the years of my administration from my associates, the State officers. Their earnestness and ability have been conspicuous, and whatever success has accompanied the administration of the State government during the last six years is due in a large degree to their faithful devotion to the public interests.

DAVID B. HILL.

SPECIAL MESSAGES.

January 14. To the Assembly: Transmitting the annual report of the board of commissioners of pilots, the report of the board for the establishment of State insane asylum districts in the matter of the Monroe County Asylum, and the annual report of the Civil Service Commission.

February 2. To the Assembly: Transmitting the annual report of the Cooper Union.

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[18] In the Assembly, which was in political accord with the Governor, a resolution was introduced protesting against the Force bill then pending in Congress, and declaring that if the bill should be passed the Assembly would refuse to make any appropriation for the World's Fair, stating as a reason that the "passage of the Force bill will revive sectionalism to such an extent that the fair will not be the fair of the whole country, but only of a section of it." The resolution was referred to the committee on enumeration and apportionment, but it does not seem to have received any further attention.

February 9. To the Assembly:

Veto of a bill entitled "An act extending the time of the commissioner or commissioners of highways and other proper persons of the town of Virgil, county of Cortland, for six years from February sixteenth, eighteen hundred and ninety-one, for the purpose of settling, adjusting and procuring the assessment of damages, and for the opening, working and all other duties and requisite things necessary for the completion of a certain proposed highway in said town."

" The title of this bill indicates its true character. It is special legislation intended to confer upon the authorities of a particular town certain privileges not permitted under the general laws of the State relating to the opening of highways. Those general laws already prescribe the time within which damages arising on the opening of a new highway are to be assessed, adjusted, and settled, but this bill does not amend the general law, but seeks to enlarge such time by a special enactment whereby the proceedings for the opening of a particular highway are permitted to retain vitality and remain undisposed of for a period of six years. This bill would furnish a precedent for similar special legislation pertaining to any highway in the State which might be in process of opening, where the local authorities for any reason might desire an extension of time.

If the general laws of the State relating to the opening of highways require amendment by enlarging the time within which the proceedings should be closed, then such laws should be amended to that effect; but the proposed special legislation is objectionable and cannot consistently be approved."*

The bill was not passed over the veto.

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* See Const. 1846, am. 1874, art. 3, § 18.

February 9. To the Assembly:

Veto of a bill entitled "An act to allow the electors of the town of Johnstown to vote by ballot at their annual town meeting to raise money for the building of a bridge across Reservoir creek on Washington avenue in the village of Johnstown."

" The objects sought to be accomplished by this special legislation can all be secured under the provisions of the existing laws, without the intervention of the Legislature. The Board of Supervisors of Fulton County, acting in conjunction with the local authorities of Johnstown and the electors of that town, can accomplish the results desired equally as well if not better than by a special act of the Legislature. The proposed legislation is objectionable because it is not really necessary."

The bill was not passed over the veto.

February 16. To the Legislature:

" EXECUTIVE CHAMBER,
ALBANY, *February* 16, 1891.

" It is my sad duty to announce to the Legislature the death of General William T. Sherman at his residence in New York city on Saturday last.

His distinguished patriotic services and pure life have endeared him to the hearts of his countrymen, who everywhere now deeply mourn his loss. In this hour of universal expression of a nation's sorrow and esteem it is proper that the Legislature of the State which in recent years has claimed him as a resident and in which he died, should manifest by appropriate action the people's grief at his death and the affection and respect with which they cherish his memory.

I have already directed that as a mark of respect for the distinguished dead the flags upon the Capitol and upon all the public buildings of the State, including the armories and arsenals of the National Guard, be displayed at half-staff until and including the day of the funeral, and I commend to your consideration such further action as in your judgment may fitly indicate the public sense of appreciation and loss.[19]

DAVID B. HILL."

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[19] Both houses adopted resolutions on the death of General Sherman, and appointed a committee to attend his funeral. The Assembly, on the 16th of February, adopted the following memorial and resolution, presented by Martin T. McMahon of New York:

"He who but yesterday was the most illustrious of living Americans, has been called to join the equally illustrious brothers-in-arms who have gone before him, and the last of the pre-eminently great names of the passing century remains but a memory to the American people. With sorrowful hearts his countrymen accept the decree and bow in humble resignation; therefore, be it

Resolved, By the Assembly of the State which he had chosen as the home of his later years, that there be entered on the journal this testimonial of the honor, veneration and affection in which the people of the State of New York and their representatives in this House hold the great soldier of the republic, William Tecumseh Sherman, late general of the army of the United States. It was given to him in his three score years and ten of robust, heroic life, to win undying renown as a citizen, soldier and patriot. Trained by the nation for the profession of arms, he was yet distinguished in civil life beyond the lot of his contemporaries. During the earliest war in which he was engaged, he furnished proof of executive ability in the acquisition and organization of the new States of the Pacific, which gave promise of the higher renown to which he attained in the greater struggle for the very life of the republic. With wise and unerring judgment he foresaw and predicted the magnitude of the peril which threatened the nation, and resuming the sword which he had long laid aside, he passed from a comparatively humble rank in the service of his country through an unclouded series of triumphs to the command of all her armies, and to the full realization of the high hopes which he shared with the lovers of liberty among all the nations of the earth. He was stern in his views of duty, unflinching in its performance. He was frank and outspoken with friend and foe; just but generous to the vanquished, in thought and word and act. From the close of the war which lifted him to the high rank which he holds among the great soldiers of the world to the last sad hour when his great soul passed in suffering from among us, he held the unfailing love of his countrymen. To this high consolation which remains to those who were dear to him, this Assembly, while reverently thanking God for having vouchsafed to His people the life and services of such a man, leaving to those who are to follow him the high example of his stainless record and heroic career, desires to add this expression of the universal sorrow."

On the 23d of February, the Senate adopted the following resolution presented by Charles T. Saxton:

"*Whereas,* The death of that distinguished citizen, William Tecumseh Sherman, which recently occurred within this State, where he had resided during the closing years of his life, calls for public expression by this Senate of the high esteem in which his memory is held by his fellow-countrymen.

February 18. To the Assembly:

Veto of a bill entitled "An act to legalize and confirm the act of the board of supervisors of the county of Cattaraugus, passed on the 26th day of November, 1890, to erect two towns out of the town of South Valley in said county." [20]

"It is not the province of the Legislature to divide a town. There is already a general act conferring such power upon boards of supervisors. What the Legislature should not do directly it should not do indirectly.

This is a special act legalizing and confirming the action of the board of supervisors of Cattaraugus county in the division of the town of South Valley. The legalization is general in its terms, no particular defect being specified which is desired to be cured. While the Legislature might with propriety in such cases interfere to cure some slight technical defect, not affecting the merits, it ought not to intervene to correct a wholesale departure from the statute under which towns are divided. The friends of

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Resolved, That his death has removed from the world a great general whose fame had extended to all civilized lands, and whose name is inseparably connected with the most renowned military achievements of the present century. He was the last survivor of that immortal trio who led to victory those grand armies of the Union that fought so bravely for country and human freedom and popular government. It is largely due to his courage, genius and patriotism that the American nation still lives, the greatest Republic of all time; and that the national idea, which is its corner-stone, has been placed upon a solid and enduring foundation. Since the death of his renowned compeers, Grant and Sheridan, he has been by common consent the most illustrious of living Americans. His fellow-citizens have not only been proud of him but their affections have gone out to him in unstinted measure. They recognize in him those traits that combine to make up a remarkable and exceptional personality; simplicity, courage, honesty, loyalty and magnanimity. Their admiration for these noble and heroic qualities was only surpassed by their gratitude for his priceless services to his country and his race. In social life he was the most genial and lovable of men, as every one will testify who ever came within the circle of his personal influence. He leaves to his family the heritage of an illustrious and stainless name; and to his native land the inspiring memory and glorious results of Chattanooga and Atlanta and the wonderful march to the sea."

[20] This bill was not passed over the veto, but another bill legalizing certain preliminary proceedings relative to the division of the town of South Valley was passed, and became a law, chapter 41, on the 3d of March without the Governor's approval.

this measure do not point out what particular defect is desired to be legalized, but on the contrary they contend that the statute has been fully and legally complied with. If their claim is well founded, then there is no necessity for this bill. The subject of a division of a town is peculiarly a matter of local jurisdiction, and the contest if any arises, either legal or otherwise, should be fought out at home rather than before the Legislature at Albany.

The opponents of the measure contend that in the proceedings by the board of supervisors to divide the town of South Valley there was a substantial failure to comply with some of the essential provisions of the statute and that this measure, although in form simply a legalizing act, is in effect virtually dividing the town by act of the Legislature. I am convinced that this is not a case where the Legislature should properly interfere. Whatever contest exists as to the division of the town of South Valley should be remitted to the board of supervisors of Cattaraugus county and to the courts, where the disposition of the matter properly belongs."

February 18. To the Assembly:

Veto of a bill entitled "An act relative to lands in the city of Amsterdam, county of Montgomery, devised in and by the last will and testament of Roger McNamara, deceased, to Margaret Gillins, for and during her natural life."

"This is special legislation. There seems to be no good reason why the Legislature should pass a special act for this particular case. If no way is provided by existing statutes whereby proceedings for the desired sale can now be conducted, the proper remedy is by general, and not by special legislation."

The bill was not passed over the veto.

February 24. To the Assembly: Transmitting the annual report of the Commissioners of Emigration, and the report of the commission created by chapter 270 of the Laws of 1888 for supervising improvements at the Quarantine establishment of the port of New York.

February 24. To the Assembly: Transmitting the annual report of the State Commissioners of Health, and the annual report of the Adjutant General.

February 25. To the Senate: Transmitting resolutions adopted by the Senate of Texas, recommending an amendment to the federal Constitution "limiting the tenure of all federal officers to a reasonable term of years."

The resolution declared that "in a free representative government there is no place for any life tenure of office, and of such tenure is born arbitrary and irresponsible power."

March 9. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 9, 1891.

"I congratulate the Legislature that with complete unanimity in the Assembly, and with but eight dissenting votes in the Senate, it has fitly supplemented the electoral reform legislation of last year by taking the initial step towards submitting to the judgment of the people a constitutional amendment transferring to the courts the determination of contested legislative elections. In my special message of a year ago, in which I called attention to the abuses that had followed the exercise of that privilege so long enjoyed by legislative bodies to be 'the judge of the elections, returns and qualifications' of their own members, and in which, I believe, was contained the first official recommendation of a transfer of such jurisdiction to the courts, I expressed the hope that our own State might be the first to bring about this wholesome reform. Although not acted upon at that time, however, the suggestion which I then had the honor to make and which was repeated in my annual message of this year, has now received the warm indorsement of the Legislature, and the people whom we represent have the proud satisfaction of knowing that in the accomplishment of this much-needed and now quite generally approved constitutional reform their own State has been the conspicuous leader. [See note 9.]

Fittingly, however, as the submission of this proposed constitutional amendment will, if approved by the people, supplement the electoral legislation of last year, there are certain important particulars in which our electoral system still needs strengthening. One additional safeguard I suggested to your attention in a special message on April 21st last, urging an extension of the so-called 'Corrupt Practices' Act whereby political committees and agents should be required to file statements of expenditures in the same way that candidates are now compelled to file them. That suggestion remains unacted upon. [See note 15.] Another safeguard to pure elections, which I have recommended at various times in my annual messages and to which I now wish to give the emphasis of a special message, is the still further extension of the 'Corrupt Practices' Act to authorize the bringing of *quo warranto* proceedings by any candidate for the ousting of the successful candidate, if it can be proved against the latter that either he or his political agents or committees have resorted to fraud or corruption to secure his election, and the giving of the office to the defeated candidate, provided it appears that neither he nor his committees have used corrupt means to promote his election. Such a provision was contained in the so-called Linson bill of two years ago, and although the Legislature has neglected to engraft it upon the statutes, there has not been, so far as I am aware, any serious opposition to the principle which it embodies. If it is not deemed advisable to make a defeated candidate the recipient of the office vacated by proof of fraud, it is suggested that provision be made for a new election. As I have said frequently before in my official communications, the enactment of this, or an essentially similar law, would encourage prosecutions and put a premium upon honest candidacy. The present law, to be sure, imposes severe penalties for fraud, and disfranchises, for a period of five years, persons convicted of bribery, and this, to a certain extent, discourages corruption, but juries will find a verdict in a civil action (such as is proposed), the effect of which will oust a man from his office for fraud or corruption, without sending him to prison, where they would not convict him of a crime upon the same evidence. The accomplishment, therefore, of any practical good from the fuller description of criminal offenses and the imposition of severer penalties, requires such an encouragement to prosecutions as would be afforded by the extension of the law which I have urged. This feature of the English Corrupt Practices Act is regarded as having been conspicuously potent in the purification of elections in Great Britain.

By recent legislation we have reduced to a minimum the opportunities for men to sell their votes and we have stamped the law's disapproval upon the improper expenditure of money by candidates for office; shall we not go still further and compel the forfeiture of an office when the incumbent or his political agents can be proved to have employed illegal means to secure his election, irrespective of the size of his majority? No greater incentive to honest elections could the law present than that the proof of bribery should work a forfeiture of office. The Constitution of the State excludes bribers from the privilege of franchise;[e] shall our laws admit them to the right to hold office? This is the defect and shame of our present laws, that while it may be proved that many of the votes received by a successful candidate have been purchased, the election is not void unless the number of purchased votes equals or exceeds the candidate's plurality over his competitors. The proposed amendment would but carry out more closely the spirit of the Constitution, that any corrupt act on the part of the candidate or his agents to secure an election should disqualify him from the right to hold the office, whether or not he has been convicted of the offense in a criminal court. The poor candidate would then be on a perfect equality before the law with the rich, and the honest candidate would have his rightful advantage over his dishonest competitor.

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[e] Const. 1846, art. 2, § 2.

Without discussing further what should constitute the details of this proposed measure, I submit these suggestions to your consideration, trusting that they may receive your approval and become part of our election laws. Under the English law, when fraud or corruption is proved, the election becomes void, and a new writ of election is issued, and so the process may go on until no dishonest practices in an election are proved. Whether that is advisable in this country, or whether the law should provide in case of the proof of fraud or corruption that judgment should be rendered in favor of the candidate receiving the next highest number of votes, and so on, I submit to your intelligent deliberation.

DAVID B. HILL."

March 16. To the Assembly: Transmitting the annual report of the Comptroller of the Sailors' Snug Harbor.

March 23. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 23, 1891.

"The sad duty devolves upon me to announce to the Legislature the death of Lucius Robinson, who expired at his home in Elmira at noon to-day.

His four score years marked the limits of a life well spent. He was a man true to his convictions of right, faithful to the duties of citizenship, conscientious and able in administering the trusts committed to him by the people. He filled with credit to himself and satisfaction to the State offices of responsibility and honor. He was successively district attorney, member of assembly, comptroller, member of the Constitutional Commission of 1872, and Governor. As Executive of the State he was a loyal representative of honest administration and economical government, and his official acts made conspicuous the sturdy traits of his character and the keen quality of his intellect.

In recognition of his distinguished public services I have ordered that the flags upon the public buildings be displayed at half-staff, and I recommend such further action by the Legislature as may be deemed appropriate in this hour of his death.[21]

DAVID B. HILL."

March 23. To the Assembly:

Veto of a bill entitled "An act supplementary to chapter 60 of the laws of 1813, entitled 'An act to provide for the incorporation of religious societies,' passed April 5, 1813."

"This bill purports to add to the general act of 1813 certain provisions relative to the proceeding to incorporate and to trustees, but applicable solely to churches in communion with the African Methodist Episcopal church. Such churches may now incorporate under the act of 1813. A comparison of the provisions of this bill with the present law permitting these churches to incorporate, discloses only a few changes, mostly immaterial. The only material changes contemplated would increase the power of the minister at the expense of the members of the congregation, and require the election of all instead of one-third of the trustees annually. The existing provisions of law proposed to be changed have worked well for a long number of years and I am unaware that any dissatisfaction with their operation is felt by any members of the African Methodist Episcopal churches. A good reason for these changes, which alone should impel them, is not apparent.

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[21] Resolutions on the death of former Governor Lucius Robinson were adopted in both houses, and each house appointed a committee to attend his funeral.

The bill is defective in form, confusing and ungrammatical in phraseology, and unnecessary."

The bill was not passed over the veto.

March 23. To the Assembly:

Veto of a bill entitled "An act changing the name of the United Presbyterian Church of North Hamden, New York."

"This bill is unnecessary special legislation. If the 'United Presbyterian Church of North Hamden, New York,' is a corporation, chapter 322 of the laws of 1870 gives the Supreme Court ample power to change its name; and by chapter 323 of the laws of 1853, and chapter 245 of the laws of 1880, sections 2410–2418 of the Code of Civil Procedure, defining the procedure to change the names of individuals, are extended to religious corporations.

If it is only a voluntary unincorporated association of individuals for religious worship, they have as much power to make the desired change as they had to assume their present name. In either case this bill is unnecessary."

The bill was not passed over the veto.

March 25. To the Assembly:

Veto of a bill entitled "An act to authorize the surrogate of Oneida county to procure a new seal for said court."

"This is local legislation and special in its character.

The bill authorizes the surrogate of Oneida county to procure a new seal for the Surrogate's Court of that county. Section thirty of the Code of Civil Procedure already provides a method for the procurement of new seals for county clerks, surrogates' courts, and certain other courts. The procedure there provided seems to be amply sufficient to cover the objects sought to be accomplished by this measure. If for any reason the Code is insufficient for that purpose, it should be amended so as to afford the relief desired, rather than that a special bill should be passed for a particular court in a particular county. There are sixty counties in the State, and it is not desirable to legislate for each one separately in a matter of this kind. The subject should be covered by general legislation."

The bill was not passed over the veto.

March 25. To the Assembly:

Veto of a bill entitled "An act to incorporate the fire department of the town of Flatlands, Kings county, New York."

"There is already upon the statute books a law for the incorporation of fire departments in villages. There is also a law for the organization of fire companies in the towns of the State.

It is true there is no general law for the incorporation of fire departments in towns, because ordinarily there are no fire companies in towns, proper, as distinguished from villages. If any towns have become so populous that fire companies or fire departments are an actual necessity, such towns should be incorporated into villages or cities. The town of Flatlands is a town containing several thousand population and is thickly settled, and under the form of a town government it is endeavoring to exercise municipal powers through the aid of extensive special legislation.

There is no necessity for any further general laws upon the subject of fire companies or fire departments in towns generally, and there is no propriety in a special bill for this particular town of Flatlands.

I think it is a proper time to order a halt in the matter of special legislation for the country towns of Kings county. There has been a flood of it in the past and some of it has been mischievous if not actually dangerous. Town governments are not safe or proper repositories for the exercise of municipal powers. The truth is that nearly all the towns of Kings county should either be incorporated into villages or cities or be annexed to the city of Brooklyn where they can be afforded all the facilities of police, sewer and fire protection which they require. The session laws of this great State should not be burdened with further undesirable special legislation applicable only to a few localities in the vicinity of the city of Brooklyn.

If these towns, including Flatlands, persist in refusing to adopt a form of village or city government applicable to their needs, they must content themselves with such general legislation as is suitable and sufficient for the great body of the country towns of the State."

The bill was not passed over the veto. By an act passed in 1894, chap. 450, the town of Flatlands was annexed to the city of Brooklyn. The act was to take effect January 1, 1896.

March 25. To the Assembly:

Veto of a bill entitled "An act to authorize Edward L. Thomas to establish and maintain a ferry across Conesus Lake from Long Point on the west side of said lake to McPherson Point on the east side of the same."

" The Revised Statutes provide a system for the regulation of ferries. (*See* 2 *R. S., Banks' 8th ed., p.* 1406, *title* 2, *section* 1.) Licenses for the keeping of ferries may be granted by the county courts of the respective counties, and no application to the Legislature for that privilege seems to be necessary.

The whole subject of ferriage is naturally and peculiarly a local matter to be regulated and controlled by some competent local authority, and if the provisions of the Revised Statutes above cited are not deemed adequate to meet the requirements of any case they should be amended and made sufficiently broad and comprehensive to relieve the Legislature from the necessity of any special legislation. The valuable time of the Legislature ought not to be occupied with the passing of special bills for the establishment of ferries. Although the strict letter of the constitutional amendment of 1874 may not prohibit legislation of this character, yet the spirit of those amendments forbids it.*

The Legislature has passed a few bills of this nature during recent years which have reluctantly been permitted to become laws, but the frequency of them renders the adoption of a different course advisable at this time.

There was never any good reason why the granting of ferry privileges should not be regulated by some proper general statute, and the aid of the Legislature in behalf of particular individuals should no longer be invoked.''

The bill was not passed over the veto.

March 25. To the Assembly:

Veto of a bill entitled "An act to authorize Henry G. Burleigh and Brackett W. Burleigh and their heirs or assigns to establish and maintain a steam ferry on Lake Champlain, in the town of Ticonderoga, Essex county, New York."

'' I decline to approve this measure for substantially the same reasons as those set forth in my veto of Assembly bill entitled 'An act to authorize Edward L. Thomas to establish and maintain a ferry across Conesus Lake from Long Point on the west side of said lake to McPherson Point on the east side of the same,' this day transmitted to the Assembly. The fact that the ferry proposed by this bill is across the waters of Lake Champlain and to another State, does not materially change the situation. The present statute authorizing the granting of ferry franchises should be made broad enough to include all cases which can be effected by the legislation of this State."

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* See Const. 1846, art. 3, § 18, am. 1874, for restrictions on local legislation.

The bill was not passed over the veto.

March 25. To the Assembly:

Veto of a bill entitled "An act for the relief of Robert Stephenson Chappell and John Gibson Curell." [22]

"This bill is objectionable special legislation. The present law requires that applicants for admission to practice as attorneys and counselors-at-law shall be citizens of the United States. The proposed act would authorize the admission to these privileges of two Canadian British subjects. While special legislation of this character has sometimes been enacted, the increasing frequency of demands for it tends to nullify the provisions of the general law and should be checked. If the law governing admission to practice in the courts is not deemed sufficiently broad in its provisions, it should be amended — not evaded by special legislation for the relief of individuals."

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[22] Section 56 of the Code of Civil Procedure, as amended in 1894, chapter 760, created a State board of law examiners to be appointed by the Court of Appeals, and directed the Court to provide for a uniform system of examinations. This section applied only to a citizen of the State, and by Rule 4, of the Court of Appeals, relative to the admission of attorneys, only a citizen of the United States, who is also a resident of the State, is entitled to take an examination for admission to the bar. The same section of the Code, 56, authorized the Court of Appeals to make rules relative to the admission of persons who have been admitted to practice in other States or countries.

Rule 2 provides that any person who has practised as an attorney and counselor three years in any other country may be admitted to practice in this State without examination, if possessing the other prescribed qualifications. Provision is also made for the admission of other non-resident attorneys.

The bill was not passed over the veto.

March 26. To the Senate:

Veto of a bill entitled "An act to amend chapter 598 of the laws of 1881, entitled 'An act to incorporate the New York Building and Improvement Company.'"

"This bill is unnecessary. Its object is to permit the New York Building and Improvement Company to increase or diminish the amount of its capital stock. Chapter 264 of the laws of 1878 empowers this corporation to reduce the amount of its capital stock, while chapter 564 of the laws of 1890, which goes into effect May 1, 1891, will permit it to either increase or diminish the amount of its capital stock."

The bill was not passed over the veto.

March 26. To the Senate:

Veto of a bill entitled "An act to incorporate 'the New York conference of the African Methodist Episcopal Church.'"

"It is difficult to conceive upon what the Legislature could base its judgment that the objects of this proposed corporation cannot be attained under general laws. Either chapter 110 of the laws of 1876 or chapter 319 of the laws of 1848 will permit the incorporation. Chapter 110 of the laws of 1876 is an act specially to provide for the incorporation of such bodies as the New York Conference of the African Methodist Episcopal Church."

The bill was not passed over the veto.

March 31. To the Assembly:

Veto of a bill entitled "An act to authorize and require the State Engineer and Surveyor to locate and determine the boundary line between the county of Genesee and the counties of Erie and Niagara." [23]

"This bill requires the State Engineer and Surveyor to make a survey and to determine therefrom the boundary line between the counties of Genesee, Erie and Niagara.

The State Engineer and Surveyor reports to me that such boundary line is not clearly fixed by the present law and cannot be determined from a survey. The only possible remedy for the situation would appear to be a law providing for the establishment of the boundary line so that the location thereof can be determined from a survey."

March 31. To the Assembly:

Veto of a bill entitled "An act to amend the commissioners' map of the city of Brooklyn."

"This bill is special legislation which I cannot approve. It authorizes the common council to alter the commissioners' map of the city of Brooklyn with reference to a certain street. If this power may properly be exercised in any instance, it should be so conferred upon the local authorities that it may be exercised in every instance of merit. The common council of Brooklyn, under the charter, can open streets. It can close, extend, widen and regulate them. It can grade, pave, regrade and repave them, but it cannot alter the lines of the commissioners' map. But such power is germane to the powers already vested in this body and it should properly be given to it. The charter should be so amended that the common council may deal with this and all similar cases, and any necessity for objectionable special legislation similar to this act, be forever done away with."

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[23] This bill was not passed over the veto, but an act was passed in 1892, chapter 483, directing the State Engineer and Surveyor to determine the boundary line between the counties of Erie and Genesee.

The bill was not passed over the veto.

April 2. To the Senate:

Veto of a bill entitled "An act to make the office of county clerk of Cayuga county a salaried office, and regulating the management of said office."[24]

"The principal object of this bill is to change the office of county clerk of Cayuga county from a fee to a salaried office.

There seems to be a popular demand for bills of this character. Last year similar bills were passed for each of the counties of Chautauqua, Ontario and Steuben. This year similar bills for the counties of Madison, Wayne and Erie have been passed and permitted to become laws without my signature. Last year a bill was passed changing the office of sheriff of New York county from a fee to a salaried office, and a similar bill became a law this year affecting the sheriff's office of Erie county. In addition to this bill there are also in my hands at this time three other bills applicable to other counties, changing certain county clerks' offices from fee to salaried offices. I am advised that a large number of similar bills are on the files of the Legislature awaiting consideration.

The increasing multiplicity of special bills of this character naturally leads to the suggestion of the advisability of one general law permitting the boards of supervisors of counties to determine for their respective counties, the question of the adoption of a salaried or a fee system for both of the offices of county clerk and sheriff.

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[24] This bill was not passed over the veto. No general law was passed on this subject, but the Legislature continued to pass special laws making the offices of county clerk and sheriff salaried offices.

The propriety of such a general law is apparent, and it is believed there are no constitutional or other valid objections to such a course. Whether such offices should be under a salaried or fee system is particularly a local question, which may properly be determined by the local legislature of each county.

There are sixty counties in the State, and if the present flood of legislation of this character continues there are likely to be one hundred and twenty bills of this nature upon the statute books. Another year these numerous bills are likely to be supplanted by amendatory and possibly repealing bills, and the attention of the Legislature will inevitably be largely engrossed with the consideration of local bills of this kind.

The present hour is opportune for stopping further special and local legislation applicable only to particular counties, and for the enactment of a comprehensive general law upon this subject, remitting the whole matter to the determination of the boards of supervisors of the various counties of the State. Such a general law has already been introduced and is now pending in the Senate, and it is believed that its enactment will speedily follow.

In view of this proposed general law, this special act and all other similar acts now in my hands and pending in the Legislature will become wholly unnecessary.

While doubting the wisdom of changing the present fee system which generally prevails throughout the State, I am not disposed in this instance to insist upon my personal opinion in opposition to the sentiment of the Legislature, by preventing the new system from having a fair trial. In my judgment, the changes contemplated by this and similar bills may not prove as advantageous as they are expected to be, and there is danger that in the end the offices which are now self-supporting will ultimately become a burden upon the taxpayers; and while inclined to believe that the true remedy for existing abuses lies in the reduction of fees wherever they seem to be unreasonably large or extravagant, rather than in an entire change of system, yet I am willing that the experiment proposed by the Legislature and apparently desired by the people should be given a fair opportunity to demonstrate its merits, provided it can be done without entailing a mass of unnecessary special legislation.

Until the proposed general law now awaiting action shall have been disposed of, I feel compelled to withhold my approval from this bill and bills of a similar character."

April 2. To the Senate:

Veto of a bill entitled "An act to authorize the railroad commissioners and the town board of the town of Perry, Wyoming county, to use certain funds in the hands of the railroad commissioners for the payment of town charges." [25]

"This bill proposes to allow the expenditure of the moneys coming into the hands of the railroad commissioners of the town of Perry over and above the amount required for the payment of interest upon certain railroad bonds of the town to be expended for general town purposes. It appears that such moneys were intended to be accumulated as a sinking fund to meet the principal of such bonds when due. The bill proposes no substitute for this method of meeting the principal of such bonds, and so far as appears from the bill the principal of such bonds must all be raised in the year it becomes due, or, more probably, more special legislation will be sought extending the time of payment of such principal or for raising the amount thereof by annual installments. If, however, these difficulties are not likely to arise and this measure is desirable for the town of Perry, it is equally desirable for all towns similarly situated, and the situation should be met by a general law and not by special legislation."

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[25] This bill was not passed over the veto, but another bill was passed in 1892, chapter 40, relating to the railroad bonds of the town of Perry.

April 6. To the Assembly:

Veto of a bill entitled "An act to amend subdivision two of section twenty-four of article second of chapter sixteen of part first of the Revised Statutes, as amended by chapter 422 of the laws of 1886, relative to highway tax."

"The difficulty with this bill is this: it seeks to amend a chapter of the Revised Statutes which was repealed by chapter 568 of the laws of 1890. Chapter 422 of the laws of 1886, which amended the same chapter of the Revised Statutes, was also repealed by the laws of 1890."

The bill was not passed over the veto.

April 8. To the Assembly:

Veto of a bill entitled "An act to amend chapter 519 of the laws of 1870, entitled 'An act to revise the charter of the city of Buffalo,' and the acts amendatory thereof."

"This bill increases the salary of the three water commissioners of the city of Buffalo from $1,200 to $2,500 each.

I am opposed to this increase being made at Albany, but I would not object to a bill authorizing and empowering the common council of the city of Buffalo to increase the salaries of such commissioners to an amount to be fixed by that body not exceeding the sum of $2,500.

It is understood that the local authorities favor the proposed increase and desire this bill to become a law, but that fact does not cure the objection urged. The power to make the increase should be vested in the local authorities and they should assume the responsibility therefor and not the Legislature. A bill simply conferring such power would be cheerfully approved, but this bill cannot consistently be permitted to become a law."

The bill was not passed over the veto.

April 8. To the Assembly: Transmitting the annual report of pardons, reprieves and commutations.

April 10. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 10, 1891.

"There is now in the State treasury, subject to appropriation by the Legislature, the sum of $2,213,330.86, which is the amount accredited to the State on account of the federal direct tax of August 5, 1861, and refunded in pursuance of the provisions of the act of Congress approved March 2, 1891.[26]

It will be the duty of this Legislature, or of subsequent Legislatures, to provide by law for the disposition of this fund. Various suggestions have been made with reference thereto, none of which, however well supported, has seemed to command general popular approval. The disposition of so large a sum of money naturally provokes some contention, and at such a time as the present, when the burdens of taxation rest heavily on our people, all proposals for expenditure are closely analyzed and carefully weighed. This critical temper of the people, and the Legislature, while extremely praiseworthy, may however prevent any legislation on the subject at this session of the Legislature, in which case the people will be deprived for a year of the benefits of the refunded money.

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[26] The source of this fund is indicated in the following resolution adopted by the Assembly on the 4th of March, and by the Senate on the 6th:

"*Resolved*, That the legislature of the state of New York hereby accepts the sums appropriated by an act of the congress, approved March second, eighteen hundred and ninety-one, entitled 'An act to credit and pay to the several states and territories and the District of Columbia all moneys collected under the direct tax levied by the act of Congress approved August fifth, eighteen hundred and sixty-one,' to reimburse the State of New York for all moneys found due it under the provisions of said act, and the trusts imposed in and by said act in full satisfaction of all claims against the United States on account of the levy and collection of such tax; and hereby authorizes the governor of the state to receive the moneys so appropriated for the uses and purposes specified in said act of congress, approved March second, eighteen hundred and ninety-one."

I would respectfully recommend to the Legislature a method of immediate disposition which in my opinion would satisfy all classes of people, affording a continuing relief from taxation, and still leave upwards of a million of dollars in the treasury, to be devoted to such special object as the Legislature may hereafter agree upon.

My suggestion in brief is that the money should be used to liquidate the outstanding bonded indebtedness of the State, most of which is now drawing interest at the rate of six per cent., and the remainder at two and a half per cent., and all of which is to a considerable extent an annual burden upon the people.

I am informed by the Comptroller that on July 1, next, he will be obliged to pay towards the reduction of the canal debt out of the canal debt sinking-fund the sum of $1,645,250, together with interest amounting to $49,357.50. If a sufficient portion of the direct tax money should be used in meeting this obligation the canal debt sinking-fund would remain intact at $3,764,069.50, which would be not only sufficient to provide for the payment of all the remaining outstanding canal debt, but leave a balance to the State's credit of $1,055,379.50. Such an application of part of the direct tax money moreover would make it unnecessary to levy the tax of one-eighth of a mill, as provided by chapter 50, laws of 1891, for interest and the sinking-fund, amounting to $447,540, or to levy any additional tax hereafter for that purpose. There would consequently be a saving of at least $559,540 to the people next year and the year following.

I am also informed by the Comptroller that there will be due on July 1 next $100,000 of Niagara Reservation bonds, with interest amounting to $6,250, both of which sums are included in the supply bill now pending. The outstanding Niagara Reservation bonds on July 1 in addition will amount to $400,000 now drawing interest at two and a half per cent. If the balance of the direct tax money were used for the redemption of these outstanding bonds and for the payment of the interest and the $100,000 due July 1, not only could this year's supply bill be diminished by $106,250 but the entire Niagara Reservation debt would be wiped out, and the annual appropriation for interest avoided.

The net result therefore of such an application of the direct tax moneys as I have suggested, and which I herewith recommend to your consideration, would be to place the State entirely out of debt and afford relief to the people to the extent of over a million dollars in taxation.

But more than this, such an operation would still leave in the canal debt sinking-fund, over and above all demands, a balance of $1,055,379.50. This would consist mainly of securities, now well invested, which could be sold or transferred to other trust funds, and the proceeds used for such purposes as the Legislature might direct.

The application of any part of this money towards a reduction of the tax levy to a greater extent than is secured by doing away with the annual appropriations for interest and principal of the State debts may well be deemed objectionable, and the course here suggested avoids this criticism.

Such a disposition of the money as I have outlined is indorsed by the Comptroller, and I respectfully ask for it your serious consideration. It is good policy as a general rule for governments, as well as for individuals, to pay their interest-bearing debts when they are able, and when, as in this case, the payment of the debt relieves the people from a million dollars in taxation and places a million dollars surplus in the treasury, wise statesmanship should not be slow in adopting that policy.

DAVID B. HILL."

April 13. To the Senate:

Veto of a bill entitled "An act to amend chapter 556 of the laws of 1888, entitled 'An act to provide for a police commission in the town of Flatbush, Kings county, and to establish a police force therein.'"

"This bill is a special act amending a previous special act providing for a police commission for the town of Flatbush.

The purposes of the bill are to authorize an increase in the number of policemen now permitted to be employed and to increase the salaries of certain police officials.

The bill is objectionable special legislation.

It is not necessary to inquire whether the powers sought to be conferred upon the police commission are desirable in themselves. It is sufficient to know that the bill recognizes the present nondescript species of municipal government now applicable to the town of Flatbush and proposes to continue and enlarge the same. Towns should be governed by general legislation applicable to all the towns in the State. When towns become so populous that they have outgrown the simple form of town government applicable to all towns, then they should be incorporated as villages, and when villages have become so large that they require more extensive municipal powers and privileges than are needed by villages generally, then they should be incorporated as cities. These are correct principles of legislation and should be rigidly enforced. If it can be demonstrated that towns generally require police, fire, sewer, water and lighting departments, then a general act should be provided for such a purpose, but not otherwise. Every time the town of Flatbush wants an additional policeman or to pay an additional salary or to exercise any other municipal power, it should not be compelled to seek a special legislative act.

My views upon this subject have been so repeatedly expressed that it is unnecessary to restate them. I cannot consistently approve this measure."

The bill was not passed over the veto. By an act passed in 1894, chapter 356, the town of Flatbush was annexed to the city of Brooklyn.

April 13. To the Assembly:

Veto of a bill entitled "An act to amend chapter 445 of the laws of 1887, entitled 'An act for the preservation of the public peace, the protection of private property, maintenance of law and order and the licensing and regulating of public hacks, vehicles, venders, shows, concerts, and public amusements in the town of Gravesend, in the county of Kings.'"

"This bill amends one of the numerous special acts relating to the town of Gravesend, and authorizes an increase in the amount of the moneys which may be annually expended for police purposes from $15,000 to $25,000; and it also proposes to transfer the custody of the police fund from the police commissioners to the town treasurer.

The first objection to this measure is that no adequate reason exists for this increase of expenditure. Nothing has recently occurred to justify the demand for such legislation augmenting the burdens upon the taxpayers. Neither is there any particular necessity or propriety in asking the Legislature to pass a bill simply for the purpose of changing the custody of the police funds from certain town officials to another official. The matter is not of enough consequence to warrant a bill for such a purpose.

The second objection is that the measure is a continuance of the vicious special legislation which has been inflicted upon this town by the Legislature for many years. I protest against the Legislature of the State of New York acting any longer as a sort of common council to Gravesend and the other country towns of Kings county. These towns decline to incorporate as villages or cities, but insist upon exercising municipal powers by means of all kinds of special legislation obtained for them at Albany. The whole framework of their various town governments consists of divers special acts giving to them exclusively municipal powers and privileges denied to the other towns of the State. This state of affairs should no longer exist.

It is unnecessary to reiterate my views upon this subject further, as they were somewhat fully expressed in my veto of the bill to establish a fire department for the town of Flatlands, transmitted to the Legislature on March 24th last. An adherence to the sentiments then deliberately expressed renders the approval of this bill impossible."

The bill was not passed over the veto. The town of Gravesend was annexed to the city of Brooklyn by an act passed in 1894, chap. 449.

April 15. To the Senate:

Veto of a bill entitled "An act for the relief of the Highland and Modena Turnpike Road Company."

"This is a special act relating to the toll which may be charged by a particular turnpike company to persons residing within one mile of the company's toll gate. The bill is objectionable because there is a general law regulating the subject. If a change in this particular is desired, it should be effected by amendment to the general law and not by special legislation."

The bill was not passed over the veto.

April 15. To the Senate:

Veto of a bill entitled "An act authorizing the superintendent of public works to finish building a vertical wall on the berme bank of the Erie canal, in the county of Herkimer, and making appropriations therefor."

"After such examination as I have been able to give this bill I am not satisfied that it is wholly in the public interest.

There is much evidence that the work contemplated is intended primarily and principally for the benefit of private parties. Even if the wall already partially constructed was actually necessary there is grave doubt whether its further extension is desirable or essential so far as the interests of the State are concerned.

The bill met with considerable opposition in the Legislature as well as attracted much adverse criticism in the public press, and its merits not being fully conceded, it may be advisable to wait another year's developments before any further expense shall be authorized or incurred.

Substantially the same bill was disapproved by me in 1888, and I observe that this bill contains some of the same provisions to which I then objected.* (*See Public Papers of* 1888, *p.* 47.)

It is doubtful whether a fair interpretation of the bill permits the Superintendent of Public Works to construct any less distance of wall than the full number of feet specified in the first section of the bill; and if so, such a provision is of questionable propriety.

For these reasons, as well as because the appropriation is not deemed expedient at this time, I feel constrained to withhold my approval from this measure."

The bill was not passed over the veto.

April 20. To the Assembly:

Veto of a bill entitled "An act giving the consent of the State of New York to the purchase by the United States of certain lands in the county of Queens."[27]

"It is sought by this bill to give the consent of the State of New York to the purchase by the Federal Government of such lands as may be required for fortifications for the defense of the eastern entrance to New York harbor near Sand's Point and Hewlett's Point in Queens county. The bill is to take effect when the title of such lands shall have been acquired by the United States, and plats and descriptions thereof shall have been filed in the office of the Secretary of State.

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* *Ante*, p. 521.

[27] This bill was not passed over the veto, and the real property described in it does not seem to have been included in any subsequent cession. In 1896, a general act was passed, chapter 391, providing for cessions to the United States by deed or release, signed by the Governor, which he was

The bill is imperfectly drawn, and omits several important provisions which have uniformly been regarded as necessary in bills of this character, for the protection of the public, the enforcement of the laws of the State, and the preservation of its sovereignty.

There is no limitation upon the area of territory which may be so purchased.

There is no restriction of the use which may be made of the lands by the Federal Government.

There is no provision that the jurisdiction of the United States shall cease, and that the State shall resume exclusive jurisdiction thereof if the lands are not used for the purposes for which jurisdiction is granted.

There is no reservation of concurrent jurisdiction by the State for the service of civil or criminal process upon persons within the territory ceded.

The retention of such jurisdiction by the State is of the highest importance, and has always heretofore been so regarded by the Legislature. Without it, the lands ceded

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authorized to execute on proof that the federal authorities had filed in the office of the Secretary of State certified copies of the records of transfers to the United States of tracts or parcels of land acquired by the United States "for the purpose of erecting thereon light houses, beacons, light house keeper's dwellings, works for improving navigation, postoffices, custom houses and fortifications." The act prescribed other formalities as prerequisites to the conveyance by the Governor, and the State retained concurrent jurisdiction over land so ceded for the purpose of executing thereon civil and criminal process which might be issued under the laws or authority of the State. Several cessions have been obtained under this general act, but the Legislature continued to pass special acts ceding land to the United States.

would become a safe refuge for law breakers who had committed offenses against the laws of the State, and who would there be beyond the reach of ordinary criminal process.

It will be observed that by the provisions of the Federal Constitution (Art. 1, sec. 8, par. 17), if the consent of the State is unreservedly given to the purchase of lands by the United States, then Congress will thereafter have exclusive legislative power over such places.

Too great care cannot, therefore, be exercised in granting these legislative consents and all the conditions necessary for the protection of the State and the due execution of its laws should be inserted in the grant.

The object of the bill is a commendable one, and I regret that I cannot approve of it in its present form; but it seems to have been drawn in utter disregard of all legislative precedents upon the subject, and if enacted into a law, would be contrary to the established policy of the State."

April 21. To the Assembly:

Veto of a bill entitled "An act authorizing the village of Tonawanda, Erie county, to take lands necessary, and to lay out and improve, or alter and improve public parks, grounds, streets, lanes, alleys and places therein."

"Since the constitutional amendments of 1874, the Legislature has been forbidden to pass any local bill incorporating a village.[f] Villages must now be incorporated by being organized under the provisions of the general village act.

After a village has once been organized under the general act, the Legislature has no constitutional power to amend its charter or enlarge its corporate powers.

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[f] Const. 1846, art. 3, § 18, am. 1874.

Neither can the Legislature properly pass a special act giving to that village increased corporate powers and privileges, because such a bill would be a violation of the spirit, even if not of the strict letter of the Constitution. The Legislature cannot, or at least ought not, to do indirectly what it cannot do directly. If the Legislature, while expressly forbidden to grant new village charters or to amend existing ones (incorporated under general law), can nevertheless lawfully pass distinct special acts conferring upon particular villages additional powers, then the provisions of the Constitution are successfully evaded and are powerless and useless to remedy the very evils which were sought to be remedied by the constitutional amendments of 1874.

This bill is obnoxious to the criticisms above suggested. The village of Tonawanda was incorporated under the general act of 1870. It now desires certain powers for the improvement of its public streets, additional to or different from the powers conferred under the general laws, and this bill contains the desired provisions.

The relief sought is meritorious, but it must be secured by an amendment to the general village act and not by a special act of the Legislature.

Even if not clearly unconstitutional, it is certainly impracticable and unwise to attempt to give to every village in the State incorporated since 1870, a special bill conferring new and peculiar powers and authorizing different methods of procedure than those granted and allowed under the general act, whenever any village imagines that it requires something different from the general law.

It is with great regret that I feel constrained to refuse to permit this bill to become a law."

The bill was not passed over the veto.

April 21. To the Assembly:

Veto of a bill entitled "An act to provide a board of electric light commissioners in and for the village of West Troy."

"This bill, among other things, provides for the election of five officers of the village of West Troy, to be known as the 'Board of Electric Light Commissioners.'

It declares that such commissioners shall be elected by ballot, but it restricts the right to vote to those electors who are 'taxable inhabitants' of the village. In other words, the bill establishes a property qualification for the electors who are to vote for these particular officials. This restriction violates section one of article two of the Constitution, which guarantees to every male citizen of twenty-one years of age a right to vote for all officers who are elective by the people.

The action of the Senate in refusing to transact any legitimate business until a resolution for a partisan investigation of the canals shall have been adopted or acted upon,* prevents the recalling of the bill for amendment, and hence I am compelled to veto it."

The bill was not passed over the veto.

April 21. To the Assembly:

Veto of a bill entitled "An act for the relief of the West Side Street Railway Company of Buffalo, N. Y."

"This is a special bill relieving a particular street railway company from certain obligations required to be performed under its charter.

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* A dead lock in the Senate had resulted from a controversy over a resolution introduced by Senator John Laughlin of Buffalo, on the 8th of April, requiring the Senate committee on canals to investigate the canal department, and report to the Legislature at its session in 1892. The resolution was taken up for consideration on the 16th, and was opposed by the minority. The majority practically refused to permit the transaction of ordinary business until the resolution had been adopted, and little business was, there-

Street railway companies are not now incorporated under special acts of the Legislature, but under general laws, and if it is proper in any case that a company should be relieved from any obligation which it has assumed in its charter, the methods for obtaining such relief should be provided for in the general law. The charter of street railway companies should neither be amended nor granted by special acts."

The bill was not passed over the veto.

April 21. To the Assembly:

Veto of a bill entitled "An act to authorize the removal and reinterment of the human remains buried in the old Burt cemetery or burying ground in the town of Scriba, Oswego county."

"It is difficult to discover on what theory this bill can be sustained. The cemetery which it is proposed to remove or destroy, or from which human remains are to be taken, does not appear to belong to the town of Scriba, but is conceded to be the property of private citizens.

It may well be doubted whether either the Legislature or the town has any right arbitrarily to enter upon such cemetery grounds and remove anything therefrom. If it can be done at all, it might be in the exercise of police powers and upon the theory that a nuisance is maintained; but even in that case it may properly be contended that the property cannot lawfully be disturbed except after due notice to and an opportunity to be heard on the part of the owners.

There is nothing appearing upon the face of this bill from which it can be claimed that it is determined or ad-

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fore, done until the 30th, the last day of the session. On that day, by unanimous consent, some necessary legislation was enacted but the canal investigating resolution was not adopted.

During the dead lock a bill was introduced in the Assembly and passed providing for a non-partisan canal investigating commission to be appointed by the Governor and Senate. This plan was proposed in the Senate as a substitute for the Laughlin resolution, but it was not acted upon.

judicated in the bill itself that a nuisance in fact exists. And even if a nuisance were admitted to exist, no special act of the Legislature is required to remove it, as towns have been given authority to 'change, abate or remove' nuisances. (*See subdivision* 7, *section* 24, *of chapter* 564 *of the Laws of* 1890.)

It is to be feared that the bill would complicate rather than facilitate the relief which is really desired, and the safest course is not to permit it to encumber the statute books."

The bill was not passed over the veto.

April 24. To the Assembly:

Veto of a bill entitled "An act for the relief of the Thirty-fourth street ferry and Eleventh avenue railroad company."

"After a careful consideration of this bill, I am not convinced that the public interest will be promoted by its enactment, and, therefore, I cannot consistently approve the same."

The bill was not passed over the veto.

April 24. To the Assembly:

Veto of a bill entitled "An act for the relief of the Fulton, Wall and Cortlandt street ferries railroad company."

"From such consideration as I have been able to give this measure, I do not think its enactment will subserve the public interests, and I cannot consistently approve the same."

The bill was not passed over the veto.

April 27. To the Assembly:

Veto of a bill entitled "An act to amend chapter 267 of the laws of 1875, entitled 'An act for the incorporation of societies or clubs for certain lawful purposes.'"

"The amendment proposed by this bill simply increases the maximum limitation of the amount of property which may be held by corporations organized under chapter 267 of the laws of 1875 from $500,000 to $1,000,000, and the annual income thereof from $50,000 to $75,000. Chapter 553 of the laws of 1890 allows corporations such as are formed under the act proposed to be amended to hold property not exceeding $3,000,000 in value and $250,000 in annual income. This bill is, therefore, apparently unnecessary."

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act to amend chapter 554 of the laws of 1889, entitled 'An act to prohibit the St. Regis Indians, residing in the Dominion of Canada, from trespassing and settling upon that portion of the reservation of the St. Regis Indians, residing in this State.'"

"This bill, among other things, provides that a person may be convicted of an offense and sentenced to thirty days' imprisonment in the county jail, without bail or right of appeal, and without an opportunity to offer evidence in his defense.

The Constitution (sec. 6, art. I) provides that no person shall be deprived of life, liberty or property without due process of law. Due process of law requires that the accused shall have "his day in court."

The bill is crudely drawn; and while its object may be meritorious, the method of its attainment is of doubtful constitutionality."

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act enabling the board of claims to hear, audit and determine the claims of Matthew J. Myres against the State of New York for services rendered by him for the State in the year 1888."

"I respectfully refer the Legislature to my Public Papers of 1890, p. 115, where are set forth my reasons for disapproving a bill which purported to authorize the Board of Claims to hear this claim.* As this bill is as objectionable as the other was, I cannot consistently approve it."

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act to amend chapter 24 of the laws of 1888, entitled 'An act to amend chapter 817 of the laws of 1873, entitled "An act to provide for the support of the poor of Jefferson county."'"

"The bill is defective in form in that its section 1 declares that 'section eight of the laws of 1888 * * * is hereby amended so as to read as follows,' omitting mention therein of the number of the chapter of the laws of that year which it proposed to amend.

The dead-lock in the Senate prevents the recall of the bill for correction; and as this is my last day for its consideration, I am compelled to veto it."

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act in relation to the inspection and operation of steam or naptha vessels on Oneida, Onondaga and Skaneateles lakes."[28]

"The purposes of this bill are indicated in its title.

It is proposed to establish for three certain lakes a board of commissioners of navigation to be appointed by the Governor, to have charge of the inspection of all steam and naphtha vessels conveying passengers for hire on either of said lakes.

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* *Ante*, p. 976.

[28] This bill was not passed over the veto. The navigation law, L. 1897, chapter 592, section 4, created the office of inspector of steam vessels, and directed the Superintendent of Public Works to appoint two such inspectors. Steam vessels, naptha and electric launches were subject to the inspection provisions of the law, and with all orders, regulations and requirements of the inspectors. For amendments, see L. 1903, chapter 420.

The provisions of the bill are very elaborate and its general purposes are doubtless meritorious, but the objection thereto is that there ought not to be a special bill containing a peculiar system of inspection for three lakes only.

There are too many lakes in the State of New York to permit a separate board of commissioners for every three of them, having different jurisdictions, different powers, and pursuing different systems or methods.

There should be one complete and comprehensive statute applicable to all the interior lakes of the State, and not a special statute for each particular locality.

I declined to approve a similar bill which was passed in 1887,* and subsequent reflection has confirmed my opinion that such a course was eminently proper.''

April 29. To the Assembly:

Veto of a bill entitled "An act to legalize the special election of village officers, held in the village of Clifton Springs, in the county of Ontario, on the ninth day of September, eighteen hundred and ninety."

'' This bill is objectionable upon two grounds.

1. It is unconstitutional. The title of the bill expresses the single object of legalizing a special village election held Sept. 9, 1890, which is accomplished by section 2 of the bill. But section 1 of the bill proposes an entirely different and wholly disconnected object, to-wit: the legalization of the acts of certain officers of the village during a period of nearly six months before such special election. This being a local bill should conform to sec. 16, art. III of the Constitution, which provides that all private or local bills shall have but one subject, and that shall be expressed in the title.

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* *Ante*, p. 469.

2. The proposed legalization of all the acts of the village officers is too broad. The legalization should be limited to such acts as would be void but for the circumstances specified. There is danger that the bill might, if approved, legalize acts of these officers which are invalid for other reasons."

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act to provide for repairing and reconstructing the banks and channel of Glen creek in the village of Watkins and making an appropriation therefor."

"This bill appropriates the modest sum of ten thousand dollars for the purpose of repairing and otherwise improving the channel of Glen creek in the village of Watkins.

It is claimed that because many years ago the channel of this creek was changed for the benefit of the canal, the State has in some manner become liable for the continued repairment or improvement of the creek. The Member and Senator who procured the bill to be passed, are understood to vouch for its honesty, but the liability of the State does not seem to be very clear, however, and at this time when it is apparent that partisan clamor is endeavoring, for political purposes, to attach suspicion to every liberal canal appropriation made by the Legislature, it is preferable to avoid public criticism by refusing every appropriation the merits of which are in the least degree doubtful. Some injustice may possibly be done by such a course, but those who have been instrumental in fomenting the clamor cannot reasonably object if their own measures are subjected at this time to the most rigid scrutiny.

Further delay in the granting of this appropriation may throw more light upon its merits, and be productive of other good results."

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act in relation to percentages paid by certain street surface railways."

"A bill substantially similar to this one, or at least seeking the same relief, has been before me once or twice before and has each time failed to receive my approval. I discover no reason why I should change my opinion of its merits.

Without being an amendment to the Cantor act, it virtually repeals, modifies or nullifies the provisions of that act so far as certain street railway companies are concerned.

It is obnoxious as being undesirable special legislation.

While it is undoubtedly true that the public interests would be promoted by some needed general modifications of the Cantor act, yet I am not prepared to say that the relief sought in this measure could ever be safely granted.

The local authorities or some of them are opposed to the bill and have filed with me a brief in opposition to the same, and I cannot consistently pursue any different course in reference to this measure than I have pursued in the past in regard to similar measures.

I do not think the bill is in the public interest and it, therefore, ought not to become a law."

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act to authorize the board of claims to hear, audit and determine the claim or claims of Peter R. Fingar against the State and to make an award therein."

"There is nothing appearing on the face of this bill to show the precise time when this claim accrued. From its nature, and from papers submitted regarding it, the claim evidently must have accrued during the war of the Rebellion. The passage of this bill, therefore, would apparently afford no relief to the claimant, inasmuch as the claim seems to be barred by the limitation prescribed in the Constitution. (*See sec.* 14, *art.* 7, *of the Constitution.*) The bill cannot properly be regarded as an adoption or approval or other legal recognition of the claim itself, so as to take it out of the constitutional provision above cited. If the bill would bear that construction, it is a recognition of a very stale claim which it is not the true policy of the State to revive."

The bill was not passed over the veto. According to the Assembly Journal this message was filed with the clerk on the 27th, but was not announced until the 29th.

April 29. To the Assembly:

Veto of a bill entitled "An act to authorize the board of claims to hear, audit and determine the claim of Joseph Milliete, against the State, for arrears of pay as captain of company C, first United States lancers volunteers, and as captain of company I, ninth New York cavalry."

"It is not apparent from the bill itself just when this claim accrued, but from its nature it probably accrued during the war of the Rebellion, and is, therefore, similar to Assembly bill No. 105, which was returned disapproved to the Assembly on the 27th instant. I respectfully refer the Legislature to my veto message transmitted with that bill, as the reasons therein set forth apply with equal force to this claim.

The express provision in this bill exempting the claim from any limitation prescribed by any law or statute now in force in this State does not affect the operation of the constitutional prohibition. (*See sec.* 14, *art.* VII *of the Constitution.*)"

The bill was not passed over the veto. See the last preceding message vetoing the Fingar bill.

April 29. To the Assembly:

Veto of a bill entitled "An act to authorize and require the treasurer of Oneida county to redeem certain lands in said county, sold by the Comptroller at the tax sale in December, 1890, to authorize and require the said Comptroller to cancel certain certificates of sale and issue new ones in lieu thereof to said treasurer and to settle with said treasurer concerning the said lands so sold, and to authorize the board of supervisors of said county to assign the certificates of sale therefor to, and levy the amounts due thereon upon, the cities and towns respectively interested therein."

"This bill seems to be imperfect and unintelligible in its general features and cannot be approved. Most of the remedies attempted to be provided for under the bill can be afforded under existing laws. The title of the bill itself is inconsistent. It purports to be an act to authorize and require the treasurer of Oneida county to redeem certain lands in said county sold by the Comptroller at the tax sale in December, 1890, to authorize and require the said Comptroller to cancel certain certificates of sale and issue new ones in lieu thereof to said treasurer. The remedies to redeem and to cancel are utterly inconsistent. There is no need of special authority to redeem from the sale. That right is absolute under existing law for two years after the sale and if the certificates were cancelled, then there could be no redemption, and *vice versa*. Section one authorizes application by the county treasurer to the Comptroller to cancel the certificates of sale of lands sold by the Comptroller at the State tax sale in December, 1890, to 'individuals, firms and corporations' without any reason or ground specified and directs that the Comptroller shall issue new certificates to the treasurer of Oneida county in lieu thereof.

Section two of the bill provides that after the cancellation has been made by 'said county treasurer,' the Comptroller is required to state an account for the taxes for which the lands were sold against the treasurer of Oneida county. The reference to the cancellation made by the county treasurer is clearly error, as the cancellations referred to in section one are to be made by the Comptroller and not by the county treasurer.

It is provided in section two, also, that in the account to be stated by the Comptroller against the county treasurer, the county of Oneida shall be credited with the accrued interest on the taxes for which the lands were sold. There does not appear any good reason for this. The accrued interest is fairly due the State and if the provisions of the act were to be carried out for the benefit of the county, the interest upon the taxes should be paid to the State by the county.

The bill seems to be of doubtful propriety, but if such a measure is necessary it ought to be couched in such terms that it can be clearly understood and executed.

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act to authorize the trustees of the Union Mission Chapel Association of Brooklyn, eastern district, to accept legacies and donations for the relief of the poor, and to execute trusts in relation thereto, and for the amendment of its charter."

"It does not appear from the bill itself, nor from anything which has been submitted concerning it, whether the Union Mission Chapel Association of Brooklyn is or is not a corporation. The bill proposes to amend the charter of the association, but there is no reference to where, how or in what manner it may have been incorporated. It is a special bill conferring peculiar privileges and powers and is objectionable in many respects. It contains special exemptions from taxation and some of its provisions are wholly unnecessary and should not be enacted into law."

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act conferring jurisdiction upon the board of claims to hear, audit and determine the claim of Gilbert D. B. Hasbrouck against the State."

"This bill is defective in form, even if not in substance. It omits to disclose—

1. The nature of the claim;
2. The date when it accrued;
3. The grounds upon which jurisdiction is invoked or upon which liability is to be predicated.

These matters should all appear upon the face of bills of this character."

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act to amend section one of chapter 185 of the laws of 1857, as amended by chapter 415 of the laws of 1886, entitled 'An act to prevent extortion by railroad companies.'"

"The apparent object of this bill is to change the present law, which provides that a railroad company charging more than the legal fare is liable to a penalty of fifty dollars, recoverable by the party overcharged for his own benefit, so that the party may not bring his action except in the name of the people and with the consent of the Attorney-General.

The enactment of this measure would greatly weaken the efficacy of the statute in preventing charges of excessive fare. The Board of Railroad Commissioners recommend the disapproval of the bill; and as no good reason is believed to exist why the change should be made, I must decline to give it my approval.

The bill itself is very defective in form, cumbrous in expression and involved in meaning. The last sentence of section one of the bill expressly states that the so-called miscellaneous provisions of the general corporation law and the railroad law shall not affect those laws; and as these provisions are of extreme importance to those chapters, no doubt of their application to them should be created.''

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act to further amend section 307 of chapter 410 of the laws of 1882, entitled 'An act to consolidate into one act and to declare the special and local laws affecting public interests in the city of New York,' as amended by chapter 364 of the laws of 1885, and chapter 575 of the laws of 1888, relating to a pension fund for the police department of said city, and as further amended by chapter 531 of the laws of 1890."

'' The object of this bill is to increase the pensions to six persons, late captains of the New York police force, and is intended solely for their benefit. The local authorities strenuously oppose the bill as one ' without merit or justice.' I am inclined to believe that the bill would furnish a pernicious precedent for further retroactive legislation in the same direction, and it is safer that it should not become a law.''

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill entitled "An act conferring jurisdiction upon the state board of claims to hear, audit and determine the claim of David T. Smith against the state and to make an award therefor."

'' This bill seeks to authorize the Board of Claims to hear, audit and determine the ' claim ' of David T. Smith against the State for injuries received in an assault upon him by an insane convict in Auburn state prison. From an examination of the bill, it does not appear that this 'claim,' if proved, would constitute a cause of action against a private person for which any relief would be granted by our courts. I believe that in cases of this kind the Legislature should not attempt to make exceptions to the general rules for the granting of relief which govern our courts."

The bill was not passed over the veto.

April 30. To the Senate:

Veto of a bill entitled "An act to authorize the Rome, Watertown and Ogdensburg railroad company to purchase stock of a bridge company or companies."

"This bill is badly drawn and must be regarded as defective. Immediately after the enacting clause it contains a long and unnecessary preamble and recites matters of which the Legislature has no knowledge.

The practice of incorporating preambles in statutes was condemned many years ago and has been practically abandoned. It has been tolerated only in a few rare instances, involving exceptional circumstances, where a recital seemed absolutely essential to a correct interpretation of the statute. No such circumstances exist here.

The act is a special act affording peculiar relief to a particular railroad corporation and should at least be reasonably correct in form, even if objectionable in other features."

The bill was not passed over the veto.

April 30. To the Senate:

Veto of a bill entitled "An act supplementary to and amendatory of chapter 308 of the laws of 1887, entitled 'An act to provide police regulations for certain territory in the town of Vienna, in the county of Oneida,' as amended by chapter 194 of the laws of 1888."[29]

"This is a special act incorporating the village of Sylvan Beach, and is, therefore, unconstitutional. Sec. 18 of art. III of the Constitution forbids the Legislature to pass a special or local bill incorporating a village."

The bill was not passed over the veto.

April 30. To the Senate:

Veto of a bill entitled "An act to amend chapter 230 of the laws of 1886, entitled 'An act to amend chapter 254 of the laws of 1879, entitled "An act to amend chapter 87 of the laws of 1875, entitled 'An act providing for the appointment of additional notaries public,'"' as amended by chapter 516 of the laws of 1887."

"This bill increases the salaries of certain notarial clerks in the clerks' offices of New York and other counties, and provides for the appointment of such clerks in certain additional counties.

After a careful examination of its merits I have concluded that the bill is not in the public interest and I cannot consistently approve it."

The bill was not passed over the veto.

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[29] Sylvan Beach received legislative attention in 1887, by chapter 308, which provided for police regulations in certain territory in the town of Vienna. The act provided for the election of three trustees for the territory and defined their powers. The act also contained other regulations of a municipal character. This act was amended in 1888, chapter 194.

The scheme of municipal administration in this territory initiated by the act of 1887, was enlarged in 1892, chapter 428, and in 1893, chapter 167, and the Legislature of 1896 passed an act, chapter 812, revising the laws applicable to Sylvan Beach and enlarging the scope of the peculiar municipal government already established in the territory. This act was amended in several particulars in 1901, chapter 361.

April 30. To the Senate:

Veto of a bill entitled "An act to authorize the laying of a culvert under the Erie canal in the city of Utica, and making an appropriation therefor."

"While the title of this bill shows that it is a permissive bill, yet its provisions are in fact mandatory.

The title simply 'authorizes' certain work to be done, but section one expressly 'directs' the Superintendent of Public Works what he shall do.

This bill is objectionable in that particular.

Whether the work ought or ought not to be done at the expense of the State is a matter peculiarly within the jurisdiction of the Superintendent of Public Works, who can thoroughly investigate the matter and determine the question far better than can the Legislature.

It is singular that the Legislature persists in passing bills of this character, which leave no discretion in the official having charge of the canals, but absolutely direct him to spend the moneys which they appropriate without regard to his own opinion as to the necessity or propriety of the expenditure.

It may also be suggested as a somewhat peculiar circumstance that those who at the present time are the most loudly clamoring for a partisan investigation of the canals and for a reduction of canal expenditures, are the most zealous in obtaining mandatory appropriations for public works along the canal for their own localities."

The bill was not passed over the veto.

April 30. To the Senate:

Veto of a bill entitled "An act for the relief of the Niagara Street Railroad Company."

"This is a special bill for the relief of a particular street railroad company. It authorizes the Niagara Street Railroad Company to change its route from certain streets in the village of Niagara Falls to certain other streets in said village, and to amend the charter of said company accordingly, and to relieve the company from any penalty or forfeiture occasioned by its failure to construct its railroad as provided by its original charter.

This is conceded to be special legislation, and is clearly objectionable. It is the settled policy of the State to require street railroad companies to be incorporated under general laws, and not by special acts of the Legislature. This policy would virtually be defeated, or rendered valueless, if a special act is permitted to be passed every time any company desires to change its route from one street in a village or city to another street. The general law should be amended by providing for proper cases where changes of route are desirable or necessary. Applications of this kind are becoming so frequent that it is essential that a general rule in reference to bills of this nature should be proclaimed and adhered to.

The spirit of the Constitution forbids the enactment of legislation of this character.

The Board of Railroad Commissioners, to which this bill has been referred, reports that the bill ought not to become a law."

The bill was not passed over the veto.

April 30. To the Senate:

Veto of a bill entitled "An act to amend chapter 110 of the Laws of 1882, entitled 'An act to amend and consolidate the several acts relating to the village of Olean.'"

"My objections to this bill are two:

1. The title is defective in that it incorrectly quotes the title of the act purported to be amended.

2. This bill proposes to add two new sections to title 2 of the act sought to be amended, which at present consists of

twenty-seven sections. Instead of stating that they should be numbered sections 28 and 29, it provides that they should be known as sections 31 and 32 respectively, thus leaving a confusing gap in the seriatim numbering of the sections.

Good legislation requires that bills should be so drafted as to avoid confusion.

An attempt was made last Friday to recall this bill that those defects might be corrected, but the Senate refused to pass the necessary resolution. As this is the last day that I have for consideration of the measure and the Legislature has failed to recall it for correction, I am compelled to withhold my approval of the bill.''

The bill was not passed over the veto. The veto message bears date of April 20, and was apparently delivered to the Senate that day, but it was not announced until the 30th.

April 30. To the Senate:

Veto of a bill entitled "An act relative to the powers and duties of the commissioners of highways of the town of New Utrecht, and to improve the method of repairing roads and bridges in said town."

'' This special bill, among other things, transfers the powers and duties of the commissioners of highways of the town of New Utrecht to a body known as a ' Board of Improvement ' of said town.

This is special legislation, and cannot consistently be approved for the same reasons particularly set forth in my recent vetoes of bills relating to the towns of Flatbush and Gravesend, to which the attention of the Legislature is again respectfully invited.''

The bill was not passed over the veto. The town of New Utrecht was annexed to the city of Brooklyn, by an act, chap. 451, passed in 1894.

April 30. To the Assembly:

Veto of a bill entitled "An act to incorporate the New York and Brooklyn tunnel company."[30]

"No brief has been submitted by any one either for or against this bill. The local authorities of New York or Brooklyn have neither of them filed any protest against it. But notwithstanding this situation, I am not convinced after a careful examination of the measure that it is a proper one to be enacted into a law. It is difficult to ascertain from the face of the bill exactly what is proposed. It authorizes the construction of a tunnel under the East river between New York and Brooklyn, but the size of the tunnel is not prescribed nor any of its purposes defined. Whether the proposed tunnel is intended for the use of cars, carriages, freight, or only foot passengers is not disclosed.

The scheme seems to be a gigantic one, but the bill lacks the careful preparation which should characterize the features and details of so important a measure, if it is a genuine undertaking.

But aside from these criticisms the bill contains peculiar and unusual provisions in reference to exemption from taxation, not applicable to similar corporations, and which render the approval of the measure an impossibility.

Further delay in the enactment of this bill will undoubtedly throw more light on its merits."

The bill was not passed over the veto.

April 30. To the Assembly:

Veto of items in Assembly bill, ch. 302, the supply bill.

"'The balance remaining in the treasury unexpended of the sum of one hundred and twenty-five thousand dollars, appropriated by chapter thirty-seven of the laws of eighteen hundred and eighty-nine, "for the pay, transportation, subsistence, and other necessary expenses of such portion of the national guard of this state as were ordered by the adjutant-general to attend the centennial celebration of the inauguration of the first president of the United States," being the sum of twenty-seven thousand and fifty-four dollars and sixty-three cents, is hereby reappropriated and may be applied for the betterment of the road leading from the state camp at Roa Hook dock; for the construction of a bridge and causeway across Annsville creek, and for the construction of a military road to connect the state camp with the river road near Highland station leading south from Garrison's upon plans to be prepared by the state engineer and surveyor, and to be expended by contract or otherwise under the direction of the adjutant-general, upon bills to be approved by him.'

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[30] An act passed in 1895, chapter 1014, authorized the New York and Brooklyn Tunnel Company to construct a single or double tunnel under the East river between New York and Brooklyn, the New York terminus to be between East Sixteenth street and Whitehall streets, and the Brooklyn terminus to be between North Eighth street and Atlantic avenue.

This item is objected to and not approved.

While ostensibly the appropriation is for a public purpose, in reality the benefits resulting from it will be more in the interest of private property, than in the interest of the State or the National Guard. If the National Guard is in equity entitled to the use of this unexpended balance, the money can be used much more profitably, so far as the interests of the National Guard are concerned, by appropriating it for much-needed expenditures for equipment, etc., rather than by applying it toward an expensive scheme of improvement which is chiefly for the benefit of local interests.

'For the commissioners of fisheries to equip their fish car for shad hatching, and to build a shed to house the car, when not in use, twenty-five hundred dollars.'

This item is objected to and not approved.

There was appropriated last year thirty-five hundred dollars for the purpose of allowing the Commissioners of

Fisheries to purchase and equip such a car. I am informed by the Commissioners of Fisheries that the lowest bid received for this work was four thousand three hundred dollars, and that some smaller expenditures made necessary will increase the total cost to four thousand eight hundred and thirty-seven dollars and fifty cents, yet if this appropriation is allowed, the Commissioners will have for that purpose the sum of six thousand dollars. I am not opposed to the purpose of the appropriation, but I do not think State commissioners should be encouraged in asking from the Legislature larger appropriations than upon the face of their own figures are necessary for accomplishing the desired objects.

'For the house of refuge for women, at Hudson, to be expended by the local board of managers for the erection and furnishing of a nursery cottage for the use of mothers and their infants, thirteen thousand dollars.'

This item is objected to and not approved, for the reason that it is not deemed expedient to make the proposed expenditure at the present time.

'For the Buffalo State hospital, to be expended under the direction of the local board of managers, for electric-light plant, fifteen thousand dollars.'

This item is objected to and not approved, for the reason stated in objection to the last preceding item.

'For the Utica State hospital, for the purchase of additional farm land, forty thousand dollars.'

This item is objected to and not approved.

While State institutions of this character should have sufficient land for their purposes the information before me does not indicate that the expenditure in this case is advisable at the present time.

'For the Hudson river state hospital for the purchase of additional land, seven thousand dollars.'

This item is objected to and not approved for the same reason that is stated in the objection to the last preceding item.

'For the Syracuse State Institution for Feeble-minded Children for an electric-light plant, nine thousand dollars.'

This item is objected to and not approved.

Even if the appropriation is necessary, and its necessity is questioned, it is not deemed expedient to make the expenditure this year.

'For the normal and training school, at Fredonia, for repairs and changes in original building; for fitting up rooms for natural science department, for library and reading room; for furniture, books and laboratory apparatus, nine thousand two hundred and fifty dollars.'

This item is objected to and not approved.

The expenditures for normal schools are increasing at a rapid rate. It is charged that the purpose for which they were originally designed has been lately much extended, and that they no longer exclusively fit pupils for teachers, but that they are taken advantage of by persons who desire to get a somewhat higher education at the public expense than is afforded by the common schools. This institution alone had an appropriation last year of fifty-one thousand five hundred dollars.

'For the superintendent of public works for necessary repairs of the state road from the east line of the town of Forestport, Oneida county, to Woodhull, in Herkimer county, one thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

While this road is occasionally used by State officers to get to State reservoirs, it is used chiefly, I am informed, as a means of access to a private camp in the Adirondacks. The Legislature appropriated one thousand dollars for improving the road last year and such expenditures in my opinion should not be encouraged by an annual appropriation therefor.

'For the Comptroller, to enable him to make restitution to Donald Mackay, Charles A. Davison and Amos C. Spear, as ancillary executors of the last will and testament of John P. Howard, deceased, of the sum of twenty-five thousand two hundred and sixty dollars and forty-one cents, paid by them into the treasury December fifth, eighteen hundred and eighty-seven, for collateral inheritance tax under compulsion of a decree of the surrogate's court of New York county, dated November twenty-second, eighteen hundred and eighty-seven, of which decree so much as assessed and fixed the said tax and ordered said ancillary executors to pay the same to the comptroller of the city of New York, was reversed on appeal by the general term of the supreme court of the State of New York October eighth, eighteen hundred and eighty-nine,* the sum of thirty-two thousand dollars or so much thereof as may be necessary to pay the said sum of twenty-five thousand two hundred and sixty dollars and forty-one cents and interest thereon to the date of restitution.'

This item is objected to and not approved.

I am informed by the Comptroller that claims similar to this and amounting altogether to about seventy-five thousand dollars are on file in his office and that a general bill applicable to their settlement as well as all other claims for the refunding of illegal payments of tax under the collateral inheritance tax law is now pending in the Legislature. It would be manifestly unfair to other claimants to authorize the special relief afforded in this item.

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* See Re Howard (1889), 54 Hun, 305.

'For the payment of the services and disbursements of Henry M. Tate as an accountant, and of his assistants, upon the employment of the committee of the senate on the affairs of cities, in its investigation of the government of cities, pursuant to resolutions of the senate passed January twenty-first and May eighth, eighteen hundred and ninety, the sum of thirteen thousand and sixty dollars and seventy-eight cents; for the payment of the services and disbursements of Cornelius J. Kane as attendant upon said committee during such investigation, the sum of one hundred and fifty-two dollars; and for the services of Margaret J. Jack as janitress of the rooms occupied by said committee in the city of New York during such investigation, the sum of one hundred and twenty-two dollars and fifty cents, or so much thereof in each case as may be necessary.'

This item is objected to and not approved.

I have frequently stated my conviction that the public funds should not be used to pay the campaign expenses of political parties by the appointment of legislative committees whose purpose and work are an *ex parte* investigation into undefined and fictitious charges against public officials. The appropriation in this item as well as those in two other items objected to below is intended to cover only a portion of the large expense incurred by one of the most notorious of these partisan investigating committees, namely, the Fassett committee, so-called. Most of this committee's time and attention were consumed in conducting a dragnet investigation into personal and political matters remotely connected with municipal administration in New York city. Hearsay evidence was freely admitted, the committee's sessions were held prior to the election and apparently for no other purpose than to influence the election, and the investigation was practically abandoned immediately after the election, the result of the contest at the polls being an emphatic condemnation of the committee's actions. I do not believe the people of the State approve such a reckless expenditure of money in so partisan and fruitless an undertaking.

'For the sergeant-at-arms of the senate of eighteen hundred and ninety, for traveling and other necessary expenses incurred by him in attendance upon the committee of the senate on the affairs of cities in its investigation of the government of cities, pursuant to resolutions of the senate passed January twenty-first, and May eighth, eighteen hundred and ninety, and in subpœnaing witnesses therefor, and for fees of witnesses paid by him, the sum of nine hundred and twenty-four dollars and thirty-two cents.'

This item is objected to and not approved for reasons similar to those stated in the objections to the immediately preceding item.

'For George H. Thornton, for compensation as stenographer for services, necessary expenses and disbursements in reporting the testimony taken before the committee of the senate on the affairs of cities in its investigation of the government of cities pursuant to resolutions of the senate passed January twenty-first and May eighth, eighteen hundred and ninety, the sum of eleven thousand eight hundred and seventy-five dollars and sixty-seven cents.'

This item is objected to and not approved for the same reasons as are stated in the objections to the two last preceding items.

'For deficiency in appropriations for maintenance and expense of teachers' institutes, for the fiscal year ending September thirty, eighteen hundred and ninety-one, five thousand dollars.'

This item is objected to and not approved.

This deficiency appears to have been caused intentionally by the unnecessary extension of the instruction given in teachers' institutes. The Legislature ought not to encourage deficiencies of this kind.

'For Russell S. Johnson, for his legal and other necessary expenses incurred by him in the matter of the election contest for the seat in the Assembly of eighteen hundred and ninety-one from the third assembly district of Oneida county, the sum of fifteen hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved.

The amount appropriated is extravagant in view of the circumstances surrounding this contest. There was no hearing nor was any testimony taken in the case. The contestant filed a petition and subsequently withdrew it, and the sitting member's expenses must have been slight, if anything."

The items were not passed over the veto.

April 30. The Legislature adjourned without day.

MEMORANDUMS FILED WITH BILLS BEFORE ADJOURNMENT OF THE LEGISLATURE.

January 31.

Memorandum filed with Senate bill, chap. 4, the New York rapid transit bill. Approved. [See note 8.]

"The enactment of this bill is a cause for congratulation to the people of New York, not only because it seems to assure to that city the speedy acquirement of much-needed means of rapid transit, but because it also marks the triumph of the principle of Home Rule — so vital to the welfare of municipalities.

For years the people of New York have appealed to the Legislature for such legislation as would remove the obstacles to rapid transit, but influences hostile to the recognition of the Home Rule principle have until now prevented a favorable response to this appeal. There has been no question of the necessity for such legislation, there have been no radical or irreconcilable differences of opinion as to the nature or details of the desired relief, there has been practically no controversy over what should constitute the salient provisions of the desired law; — the only real contention has been over the appointment of the rapid transit commissioners. Ingenious devices have been resorted to whereby legislation might be secured at the sacrifice of the principle of Home Rule.

In the measure which was originally proposed by the majority in the Legislature a year ago the names of the commissioners were inserted,— the Legislature thereby usurping an executive function and denying to the city of New York the right which it should always have through its properly constituted officers to choose its own commissioners for duties of exclusively local concern.

It was subsequently proposed to give to the Governor and Legislature the joint authority to appoint the commissioners. This was an equal violation of the Home Rule principle, and it properly failed. Neither the Governor, nor the Legislature, nor both, should be invested with the power which our Constitution in its spirit has wisely conferred on local authorities.*

These attempts to ignore a vital political principle cost New York rapid transit legislation last year, as they had before. This year, fortunately, the changed complexion of the Legislature resulting from the overwhelming popular verdict of last November has made promptly possible the much-desired legislation. In the bill now enacted the principle of Home Rule is definitely sustained. The right of the Mayor to appoint the commissioners, and the Legislature's recognition of his recently appointed commissioners are distinctly affirmed. Even the suggestion of depriving him of the power to fill vacancies in the commission, first insisted upon, has been abandoned. A wholesome and sound legislative precedent has been thoroughly established, after a long and needless controversy. This new law may subsequently be found to contain provisions of questionable propriety, but whatever corrections are deemed necessary by the commissioners will doubtless receive the ready consideration of the Legislature. The bill seems to be drawn with great care and with earnest regard for the city's interests."

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* Const. 1846, art. 10, § 2.

This act, amended 1892, chap. 556; 1894, chaps. 528, 752; 1895, chap. 519, was sustained in Re Rapid Transit R. Comrs. (1892), 65 Hun, 63; Sun Printing & Pub. Asso. v. New York (1897), 152 N. Y. 257; March v. New York (1902), 69 App. Div. 1.

March 3.

Memorandum filed with Assembly bill, chap. 44, to change the name of the United Life and Accident Insurance Association. Approved.[31]

"There is no general law which provides for the changing of the names of insurance corporations. There should be such a statute, and I cannot approve any more special bills of this character. I approve this bill in this instance for the reason that I am advised that there is now pending in the Legislature an act providing for the changing of the names of insurance corporations, which is likely to be passed. With that understanding, I have concluded to approve this act."

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[31] Provision for changing the name of corporations, including insurance companies, was made by an act passed in 1893, chapter 366, amending the Code of Civil Procedure, section 2411. A proposed change of the name of an insurance company was required to be approved by the Superintendent of Insurance.

An act passed at this session, 1891, chapter 57, provided for increasing or reducing the number of directors of a stock corporation.

March 20.

Memorandum filed with Assembly bill, chap. 93, authorizing the bonding of Utica for river improvements. Approved.

"This bill authorizes the common council of Utica to change the channel of the Mohawk river between said city and the town of Deerfield, and to issue the bonds of said city to meet the expense thereof to an amount not exceeding the sum of one hundred and fifty thousand dollars.

The bill is not mandatory in its terms. It leaves everything to the action of the local authorities. It authorizes the mayor to appoint commissioners, but it does not direct him to do so. It empowers the common council by a two-thirds vote to authorize the proposed improvement and to issue bonds therefor, but it does not compel that body to do so. It provides that the mayor in his discretion may approve the action of the common council and unless he does so the resolution of that body is of no effect. It provides that no bonds shall be issued and no indebtedness incurred (except the necessary expenses of the commissioners) unless it shall be made to appear affirmatively to the common council by the report of the commissioners that the whole improvement can be completed at a sum not exceeding one hundred and fifty thousand dollars.

The measure seems to have been carefully framed and no reasonable objection thereto is apparent. It does not violate, but expressly recognizes the principle of Home Rule, by conferring upon the local legislature of Utica and its chief executive officer the necessary authority to determine the whole question of the propriety of the proposed improvement. The principle of Home Rule does not require that every proposition for the bonding of a city should be submitted to a vote of the people. That would oftentimes be burdensome, vexatious and unwise. It is sufficient that the whole power and responsibility of the proposed undertaking are vested in and conferred upon the local authorities who represent the people. The bill is so carefully guarded that even a majority vote is not regarded as sufficient, but a two-thirds vote of the representatives of the people is required, together with the approval of the mayor. Hence there is no likelihood that any injustice can be done anybody.

If Utica wants the privilege of constructing this improvement in the manner proposed, it is difficult to discover any good reason why that city should be refused the opportunity.

It is not usual to submit such questions to a vote of the people, but they are ordinarily left to the determination of the common council. The construction of the Hawk street viaduct in Albany, involving an expenditure of over one hundred and fifty thousand dollars, was left to the determination of the mayor alone and three commissioners appointed by him. (*See chap.* 579 *of the Laws of* 1888.)

The course pursued in this bill is especially proper in this instance, because here there does not appear to be a very formidable opposition to the measure. The mayor has not opposed it. The common council has not objected to it. The Senator and all the members of the Legislature from Oneida County have favored it. I am advised that the press of Utica, without distinction of party, has sustained it. Under these circumstances I do not feel called upon to insist that any different course should be pursued in reference to this proposed improvement than has been usual in other cities in like matters. It is true that a large number of taxpayers have filed with me objections to the bill. This is not surprising. Almost every public improvement that has ever been made in any city has encountered more or less opposition.

There may be some question as to the feasibility or propriety of the scheme contemplated by this bill, but that question was more properly addressed to the discretion of the Legislature. The bill passed with unanimity, and after a careful examination of the briefs and remonstrances submitted against it, I am constrained to regard it as my duty, under all the circumstances, to approve the measure."

March 20.

Memorandum filed with Senate bill, chap. 90, to provide for police matrons in cities. Approved.

"This bill extends the present law so as to make it mandatory upon the authorities of all cities of over 25,000 inhabitants to provide for the appointment of police matrons and for the separate confinement of female prisoners. I hesitated to give my approval to a bill having a similar object last year upon the ground that the local authorities of cities should first be given sufficient opportunity to act voluntarily under the permissive provisions of the act of 1888. In the memorandum filed at that time I said:* 'I am disposed to concede that the local authorities of certain cities have not exercised their discretion in accordance with the spirit of the present law, but it seems to me wise that they should be given another year in which to make the needed changes on their own motion, and if after another year's experience a permissive law shall still prove futile, the argument in favor of a compulsory law will be much more forcible.'

From correspondence which I have recently had with the mayors of the cities of the State I am convinced that the only way to secure the wholesome results aimed at in the present law is to make its provisions mandatory. Although in a few cities, including my own city of Elmira, police matrons have been voluntarily appointed and are giving general satisfaction, in most cities no appropriations have been made for carrying out the provisions of the act. I am convinced, after reflection, that no question of Home Rule is really involved, for the proposed law is merely the application of a general principle to all municipal governments in cities of over 25,000 inhabitants. Although its enforcement will in some respects be an infringement upon local authority, this must necessarily be the case when a question of principle, not merely of policy, is involved. This bill is essentially an application of a principle, and I cheerfully give it my approval."

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* *Ante*, p. 1035.

April 10.

Memorandum filed with Senate bill, chap. 156, legalizing contract of Wayne County Agricultural Society with Frederick Borck, and Senate bill, chap. 157, for payment of Thomas Reynolds by town of Galen, Wayne county. Approved.

"This bill (and also Senate bill No. 537, entitled 'An act to authorize the town of Galen, Wayne county, New York, to borrow money and issue bonds or certificates therefor, for the purpose of paying the claim of Thomas Reynolds against said town of Galen'), are conceded to be special legislation; but they are unusual and exceptional in their character, and for that reason and because of the apparent exigency which is shown to have arisen in regard to both bills, requiring their speedy enactment, I have concluded, not, however, without some reluctance, to approve the same.

There are instances where special legislation is absolutely essential, or at least excusable, and while such cases should not be encouraged or multiplied they must be tolerated at times where great hardship might result if relief should be wholly refused.

It is true that special legislation should be avoided wherever its avoidance is practicable and where general legislation will reasonably answer every proper purpose sought to be accomplished by it. It however must occasionally be permitted, and the peculiar circumstances which render this and the other bill above mentioned so desirable present an exception to the salutary general rule forbidding the passage of special acts."

April 14.

Memorandum filed with Senate bill, chap. 181, reducing the rate of interest exacted by U. S. deposit fund commissioners. Approved.[32]

"This act proposes to reduce the rate of interest to be hereafter collected by the commissioners of the United States deposit fund on the real estate mortgages held by such commissioners in this State. The reduction is from six to five per cent. Over one million six hundred thousand dollars have been loaned by such commissioners on farming lands in this State for which mortgages are now held by them, and the reduction of interest effected by this bill affords a partial and timely relief to the agricultural communities especially interested.

This reduction is believed to be in accord with a growing public sentiment which seems to desire a lower rate of interest upon money, and which may tend to pave the way for further general legislation upon the subject."

April 16.

Memorandum filed with Senate bill, chap. 206, making an appropriation for work on the State Capitol, which became a law without the Governor's approval.

"This act creates a commission to 'assist' Commissioner Perry in the further construction of the Capitol. It is well understood that the Senate insisted upon a commission as a condition of making any appropriation, and that the Assembly did not deem it wise to antagonize the Senate upon that point.

My views upon the subject of a commission in the construction of the Capitol have been repeatedly expressed and are well known. I am opposed to a commission in such a manner, whether it is partisan or non-partisan. I believe that a great mechanical work like the construction of the Capitol should be entrusted to the sole supervision and control of a competent architect and builder, of approved integrity and fitness, such as Commissioner Perry is conceded to be.

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[32] The rate of interest on United States deposit fund mortgages was continued at five per cent. by the State Finance Law, L. 1897, chapter 413, section 87.

A commission is none the less objectionable whether it is composed exclusively of political friends or opponents. It is purely a question of principle or propriety which is involved. My objection is not to the *personnel* of the commission, but to any commission at all. But the two houses of the Legislature being politically divided, and the Senate being disposed to persist in the attitude which it has maintained for several years past in favor of a commission, and the necessity of the continuance of the work upon the Capitol being pressing, I have concluded, under all these circumstances, to waive my individual convictions upon this subject and to permit the bill to become a law without my signature."

April 20.

Memorandum filed with Senate bill, chap. 215, amending the law taxing legacies and collateral inheritances. Approved. [See note 5.]

" The legislation which is incorporated in this bill is in pursuance of recommendations which I had the honor to make to the Legislature in my annual message of last year. I said then:*

' It is respectfully suggested as worthy of the consideration of the Legislature, whether a satisfactory solution of the problem of taxing personal property may not be found in a graduated probate and succession tax upon the personal property of decedents, developing into a complete system the theory of the collateral inheritance tax. Already most estates of decedents are carefully appraised by disinterested parties through the machinery of our surrogates' courts. Without going into details, it seems possible to devise a system requiring all estates of decedents over a certain valuation to be administered in a surrogate's court, at least so far as to obtain an appraisal of the personal property thereof, and after allowing reasonable exemptions to the immediate next of kin, a percentage tax may be imposed upon the remainder, reasonably graduated by an increasing percentage as the relationship of those who are to receive is more remote, and as the valuation of the estate is greater.'

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* *Ante*, p. 928.

And again in my annual message of this year in repeating this recommendation, I said:*

'The theory of such a graduated percentage tax seems fair and just, especially in view of the fact that personal property, under existing methods, nearly entirely escapes taxation during the life of its owner. A similar system is in operation in England and I am advised that it works satisfactorily, and the propriety of its adoption here is suggested for your consideration.'

This act carries out the suggestions therein made and, it is estimated, will yield a considerable revenue to the State.

There is one apparent defect in the bill, however, in that it seems to exempt all devises of real property which are collateral inheritances from the operations of the collateral inheritance tax. The original collateral inheritance law, so-called, of which this act is an amendment, did not contain this exemption. I am informed by some of the friends of the measure that such an exemption was not intended by the Legislature. If it was an oversight it should be corrected by subsequent legislation. The deadlock now existing in the Senate makes it impossible to have the bill recalled from the Executive for amendment, and rather than endanger the enactment of what in other respects is an excellent measure, I have affixed my signature to the bill."

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* *Ante*, p. 1067.

THIRTY-DAY BILLS.

May 4.

Memorandum filed with Senate bill, chap. 311, amending the act establishing boards of medical examiners.

"This bill seems to be a reasonable and proper measure. On June 5th of last year, I cheerfully approved the act which provided for the creation of boards of medical examiners, which act was intended to pave the way for the establishment of a higher standard for practitioners of medicine to be thereafter admitted. There was considerable opposition to the bill at the time, but such opposition was not permitted to prevail.

Through inadvertence (it must be assumed) last year's bill omitted to except from its provisions those students who had duly matriculated at some medical college prior to the passage of the act. This bill simply supplies that omission.

The amendment is deemed entirely reasonable. Had my attention been called to the subject last year, I should have insisted that such students should have been exempted from the provisions of the new act.

The course suggested is not without precedent. When in 1871 new rules and regulations were established for the admission of law students, the Legislature subsequently by repeated acts expressly exempted from its provisions certain classes of students who had already entered law schools or who had regularly entered upon their law studies prior to the enactment of the law. (*See chapter* 417, *Laws* *of* 1877; *chapter* 126, *Laws of* 1878; *chapters* 35, 257 *and* 349, *Laws of* 1879; *chapter* 58, *Laws of* 1880, *and chapter* 25, *Laws of* 1881.) These precedents are exactly in point.

The Court of Appeals recently established new and additional rules for admission to the bar, but in the very order providing for the change it declared that the new rules should not apply to law students who had previously filed their certificates and were actually engaged in their studies. (*See recent rules of Court of Appeals.*)

This seems to be just and fair in reference to law students, and I can see no good reason why the same equitable principle should not be applied to medical students who had acted in good faith, and who may be said to have acquired certain 'vested rights' prior to the act of last year.

The present bill does not deserve the criticism to which it has been subjected. It is based upon a correct principle, and I can discover no good reason why it should not be approved."

May 5.

Veto filed with Senate bill entitled "An act to amend chapter 248 of the laws of 1875, entitled 'An act in relation to coroners' fees and post-mortem examinations in Erie county.'" [33]

"The act of 1875, which this bill proposes to amend, provides that the board of supervisors shall fix the salary of the coroners residing in Buffalo city at a sum not exceeding two thousand dollars, and for those residing outside of said city, at a sum not exceeding five hundred dollars. This bill repeals the limitations contained in the original act and permits the supervisors to fix the salaries of the coroners of Erie county at whatever sum they please. It unwisely removes all the reasonable restrictions which now exist for the protection of the taxpayers. Its object, undoubtedly, is to permit the salaries of the coroners of Erie county to be increased at the next meeting of the supervisors.

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[33] An act passed in 1893, chapter 621, amended the Erie county coroner's act of 1875, chapter 248, and authorized the board of supervisors to fix the compensation of coroners, which compensation was to be by salary in lieu of fees.

No facts are shown to exist justifying the change proposed. The bill is not in the public interest and I cannot approve it."

May 6.

Veto filed with Assembly bill entitled "An act to amend chapter 441 of the laws of 1864, entitled 'An act in relation to the performance of highway labor in Queens county as amended by chapter 68 of the laws of 1885, and to repeal chapter 451 of the laws of 1880, entitled "An act in relation to the performance of highway labor in Queens county."'"

"This bill is defective in form in that the title of chapter 441 of the laws of 1864 is incorrectly stated to be the title of chapter 451 of the laws of 1885. I cannot be expected to approve such slip-shod legislation."

May 6.

Veto filed with Assembly bill No. 875, entitled "An act to confer further power of local legislation upon boards of supervisors, except in the county of New York."

"The title and body of this bill are inconsistent. The title reads: 'An act to confer further power of local legislation upon boards of supervisors *except in the county of New York.*' In no section of the bill is New York county excepted from its provisions, while by section 5 the bill is expressly made inapplicable to the county of Kings. The bill must be regarded as fatally defective."

May 6.

Veto of Senate bill entitled "An act to amend chapter 203 of the laws of 1887, entitled 'An act to provide for the improvement of the streets and alleys in the village of North Tonawanda, Niagara county, and for defraying the expenses thereof by local assessment.'"

"The village of North Tonawanda was incorporated under the general village act of 1870. That general act provided for the incorporation of all villages thereafter to be created and was followed by the constitutional amendments of 1874, which prohibited special or local acts incorporating villages and required all villages to be organized under a general act.

This bill amends a special act passed in 1887 relating to the streets of the village of North Tonawanda. That act was virtually an amendment of the charter of the village, and is of doubtful constitutionality. This proposed act is subject to the same criticism. The act of 1887 ought never to have been passed, and the amendment now proposed should not be approved.

The Constitution in its spirit if not in its strict letter, forbids the amendment of village charters organized under the general village act of 1870, and likewise prevents the enactment of local or special laws conferring additional powers or privileges upon such villages. The general act should be amended if additional powers are desired for such villages. The theory of the Constitution is that there should be uniform village charters for all villages organized since 1870 and that may hereafter be organized.[s]

The same reasons contained in my recent veto of a similar act for Tonawanda are applicable to this measure, and prevent its approval."

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[s] Const. 1846, art. 3, § 18, added 1874.

May 6.

Veto of Senate bill entitled "An act to amend chapter 526 of the laws of 1887, entitled 'An act to relieve the towns of this state from damages sustained by persons while engaged in transporting traction engines along the highways of this state,' as amended by chapter 210 of the laws of 1890."

"This bill is defectively drafted.

As its title indicates, it proposes to amend chapter 526 of the Laws of 1887, as amended by chapter 210 of the Laws of 1890. Both of these acts were repealed by chapter 568 of the Laws of 1890, which went into effect March 1, 1891. The amendment should have been to section 154 of the highway law."

May 6.

Memorandum filed with Senate bill, chap. 349, ratifying acts of highway commissioners of Little Falls, Herkimer county. Approved.

"Strictly this bill ought to specify the acts and proceedings which were omitted or illegal, and which are intended to be legalized. This is the general rule and the correct method of legislation; but the Legislature having adjourned, and there being no opportunity to correct the error at this time, and the necessity for ratification being very imperative, as I am advised, I have concluded to approve the bill in its present form. It should not, however, constitute a precedent for future legislation."

May 8.

Memorandum filed with Senate bill, chap. 348, entitled "An act to amend section 7 of chapter 116 of the laws of 1863, entitled 'An act to establish a free school in district number one in the town of Hempstead.'" Approved.

"This bill is approved with some reluctance. It amends a special act relating to school district number one in the town of Hempstead. The original special act provides that the district cannot levy a tax exceeding one-fourth of one per centum of the assessed valuation, and the purpose of this amendment is to permit a larger assessment for school purposes. If the district had no special act, there would be no occasion for the measure. The appropriate remedy is a repeal of the special act, rather than an amendment of it. But that course not having been pursued and the Legislature having adjourned, it is impossible to pass a repealing act at this time, and there being an imperative necessity for some immediate relief, and the Superintendent of Public Instruction having recommended the approval of the measure, I am constrained, under the circumstances, not to withhold my signature: but the bill ought not to be considered a precedent for future legislation.

The legislation applicable to school districts ought to be general in its character and substantially uniform throughout the State, and next year the original special act, as well as the present amendment thereto, should be repealed.''

May 11.

Memorandum filed with Senate bill, chap. 361, amending the Bensonhurst Park act, Kings county. Approved.

'' This act simply amends a law of last year which provided for the laying out and maintenance of a park for the joint use and benefit of the two towns of New Utrecht and Gravesend. There is no general law under which such a park can be secured, and the relief sought must be obtained by a special law or not at all. While I could not consistently approve a special act to provide for the erection of a park for a single town (because the construction of any such park should, in my judgment, be provided for under a general law) yet where, as in the present case, a park is desired to be constructed for the joint use and benefit of two towns, it seems to be proper that it should be accomplished under a special act, as a peculiar and unusual situation is presented. The facts here shown are exceptional in their nature, requiring special relief which cannot appropriately be secured by general legislation, and, therefore, the objections which are usually urged against special legislation for a particular town are not applicable."

May 12.

Veto of Senate bill entitled "An act to amend chapter 127 of the laws of 1877, entitled 'An act to amend and make additions to chapter 463 of the laws of 1860, entitled "An act to revise the charter of the city of Oswego, and the acts amendatory thereof."'"

"This bill is vigorously opposed by the mayor and other local authorities of Oswego. It is claimed that the measure was not suggested, prepared or authorized by the common council, the board of public works, or any other representative body or official of said city. It is urged in opposition to the measure that while its ostensible object is to promote competition in the letting of contracts, its actual effect will be to prevent competition, annoy bidders, and embarrass the public interests.

It must be conceded that the bill has not been carefully framed, and that some of its provisions are not wholly free from ambiguity; and upon the whole it does not seem to be a satisfactory measure.

Whether the bill was originally devised and intended for the protection of monopoly rather than for the promotion of the public interests, it is not necessary for me to inquire. It is sufficient that I am satisfied that the bill in its present form is not desired by the official representatives of the city and by a majority of the people, and that I feel it incumbent upon me to respect their judgment and to abide by their wishes in this matter. The bill is an amendment to the charter, and as there seems to be no immediate necessity for the proposed legislation, even if it was not regarded as of doubtful propriety, it is deemed to be the wisest and safest course to permit the proposed legislation to remain in abeyance for another year, when a proper measure, freed from any suspicion of injustice, can be carefully prepared, which will be more satisfactory to the people."

May 21.

Veto of Assembly bill entitled "An act to provide for the care and commitment of pauper, destitute and indigent children, the expense of whose maintenance is a charge upon the county of Westchester, and to define the duties of the superintendent of the poor in the county of Westchester."

"This is unnecessary special legislation applicable to the county of Westchester alone. However meritorious and desirable its provisions may be, I can see no adequate reason why there should be enacted a special law for Westchester county relating to the care and commitment of pauper, destitute and indigent children. There is already a general statute relating to the same subject applicable to the whole State, and if its provisions are insufficient or inadequate it should be amended by incorporating therein the valuable provisions of the proposed legislation.

The laws in regard to the poor, the insane, the deaf and dumb, and the blind, and those relating to children, to taxes, highways, charities, schools, and subjects of that character, should be substantially alike throughout the State and should be embraced in one general comprehensive statute. The principles of correct legislation forbid that there should be a special and different law in regard to such matters for each of the sixty counties in the State.

If the county of Westchester is suffering from any other special legislation enacted in the past applicable to her charitable institutions, and the existence of which is now urged as a reason for the present extraordinary measure, the true remedy lies in the repeal of such legislation and not in the enactment of further legislation of the same objectionable character."

May 21.

Veto of Assembly bill entitled "An act to provide for a soldiers and sailors' memorial arch in the city of New York."

"I regret that I cannot approve this bill. It is defective in that its provisions are mandatory, while they should be merely permissive. While it is proper that the local authorities of New York should have authority to erect a memorial arch if they so desire, there is no reason why they should be compelled to do so. The Legislature should not *direct* any municipality to erect a memorial arch at the public expense, or to erect any other monument or structure, whether for a patriotic purpose or otherwise; but it should content itself with merely conferring the necessary authority therefor upon the municipality and leaving full discretion in the local officials whether or not to exercise the authority. The bill violates an established principle of legislation which I have endeavored to enforce during the past seven years, and I cannot consistently approve it.

I cheerfully approved a bill for a memorial arch in Brooklyn because it was permissive and not mandatory in its terms."

May 22.

Veto filed with Senate bill entitled "An act to regulate the custody and disbursement of elevated railway income percentage special tax receipts in certain cases."

"This bill is popularly known as the 'Harvey bill.'

In the year 1885 the Legislature passed and I approved a measure which was likewise known as the 'Harvey bill,' but which the Court of Appeals, on the application of the local authorities of New York city, subsequently declared to be unconstitutional. (*See People, ex rel. Harvey, v. Loew,* 102 *N. Y.* 471.) That bill was approved by me upon two grounds: First, because it provided what I then regarded as a reasonable method by which Mr. Harvey, without injustice to public interests, might receive some measure of compensation for his previous services in aiding New York city in obtaining its present means of transit; and second, because it provided for further experiments to be made by him in the effort to secure new and additional facilities for rapid transit. The prospect of developing further plans for practical rapid transit under the provisions of that bill was the principal argument which led to its approval.* (*See Public Papers of* 1885, *p.* 196.)

The present bill differs materially from the one of 1885. It abandons all idea of any portion of the accumulated funds in question being used to develop any new or additional plans for rapid transit. The bill, therefore, lacks for its support the argument that it is intended to accomplish something for the public benefit, but has narrowed itself into having for its sole object the allowance of an equitable claim to a private citizen, or providing a method for its payment from a particular fund now in the treasury of New York city.

I am not disposed to dispute the fact that Mr. Harvey's 'claim' is supported by many and able considerations. It is true that some of them are not very tangible or well defined, but they are plausible and it may be urged that the Legislature has a right in its discretion to recognize any sort of a claim, whether founded upon mere equity, charity, voluntary meritorious public services, gratitude, or other worthy considerations which appeal to our sense of fairness and propriety.

The honesty of Mr. Harvey's claim is supported by letters in its favor from many well-known citizens, including Warner Miller, George S. Coe, John J. Knox, Charles R. Flint, A. C. Cheney, E. L. Fancher, Rev. Charles H. Parkhurst, A. B. Darling, James McCreery, and numerous others.

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* *Ante,* p. 125.

The local authorities, however, strenuously object to the approval of the measure, urging constitutional and other objections. They attack the validity of the proposed scheme, as well as protest that it is without substantial merit. Their views are entitled to respectful attention and cannot well be ignored. There seems to be much force to some of the constitutional objections which they now present for the first time.

The Railroad Commissioners of the State, to whom the bill has been referred by me for their opinion, report that they do not recommend its approval.

After a perusal of all the briefs submitted on both sides, and a painstaking examination of all the questions involved, I have arrived at the conclusion that my duty will be best performed by permitting the objections of the local authorities to prevail, and by withholding my approval of the measure."

May 22.

Memorandum filed with Senate bill, chap. 387, amending the charter of the Rochester Athenaeum. Approved.

"This bill changes the name of a corporation. That may now be done under general law. Were this its only object, I should not approve it. But the bill also changes the number of directors of the corporation from 17 to 35. To make this change a special act is required. An unnecessary provision changing the name of a corporation should not be inserted in a bill that is otherwise unobjectionable; yet under the exceptional circumstances which I am informed exist in this case, requiring an immediate change in the number of directors, I am constrained, with some reluctance, to permit this bill to become a law.

If the Legislature were in session I should insist that the bill be recalled for amendment."

May 22.

Memorandum filed with Senate bill, chap. 386, changing the name of the Madison Forks Obituary Society. Approved.

"This bill, among other things, changes the name of a cemetery corporation, which may now be done under general law, and, therefore, the considerations set forth in my memorandum filed this day with the Senate bill amending the act incorporating the Rochester Athenæum, apply with equal force to this bill. But the other and principal objects of this bill, to-wit: to authorize the acquisition of necessary property, and to legalize previous acquisitions, I am advised, are not now given to this corporation by any existing statute, and are urgently needed at this time. Under these circumstances I permit it to become a law.

If the Legislature were in session I should insist that the bill be recalled for amendment."

May 22.

Memorandum filed with Assembly bill, chap. 383, extending the duration of the New York city board of electrical control. Approved.

"There seems to have been considerable public hostility to this measure. Part of the criticism which has made it notorious has arisen, I am inclined to think, from the circumstances of its passage. It is true that it passed the Senate on the last day of the session, notwithstanding the convenient 'deadlock' which that body had declared should continue until the final adjournment. It is true also that it was taken up out of its order and in preference to a number of other measures of general importance and necessity which had passed the Assembly and which the people expected to pass the Senate. It also seems to be true that this particular bill was made an exception for the mere reason that it retained in office a genial politician of the same political faith as the majority of the Senate. The Senate passed this measure, although it refused to pass the World's fair bill which was then upon the table awaiting its consideration. The one measure aided a political friend — the other was a patriotic measure demanded only by the people. The ' honor ' of the Senate permitted it to pass the one, but not the other, although it was well known that the defeat of the latter meant humiliation to the State and embarrassment to a great national enterprise.

But notwithstanding the peculiar and extraordinary favoritism shown this bill on the last day of the session, the circumstances of its passage should not prejudice the bill's fate. I am inclined to think that the measure itself is of somewhat questionable propriety. It is a grave question whether it is not an unwise policy to be annually extending the life of the Board of Electrical Control, and it may well be claimed that the best interests of the city of New York would be subserved by placing the electrical system at once under the control of some of the regularly constituted local authorities, rather than continuing it in the hands of a special board. But the Legislature having adjourned, and as there are serious differences of opinion in regard to this matter among those who have studied the subject more than I have had an opportunity to do, I have concluded with some reluctance to waive my own objections and permit the measure to become a law with my formal approval."

May 22.

Memorandum filed with Assembly bill, chap. 389, fixing the annual tax rate. Approved.

" The enactment of this bill completes the legislation for raising the revenues necessary to meet the expenses and obligations of the government during the next fiscal year. It also forms the last chapter of the session laws of 1891, and I feel no small sense of pride and satisfaction that the last legislative act to which I shall have the pleasure of affixing my official signature, is a measure of such vital interest to the taxpayers, so significant of the prosperity of the State, and so creditable to the legislators and State officers with whom the people have intrusted public affairs.

This bill makes the tax rate for the next fiscal year the lowest since 1855. The rate is nearly half as much as that fixed by the preceding Legislature. It is almost a third of that of 1889. It includes no tax whatever for paying the general expenses of government, ample provision for these being made by the methods of indirect taxation recently adopted. The only direct tax is for school and canal purposes. For the former the rate is one mill on each dollar of valuation. For canal purposes, including the canal debt, it is only thirty-seven and a-half one-hundredths of a mill — nearly half as much as last year. The total tax rate for the year will be 1.37½ mills on each dollar of valuation.

The people of the State are to be congratulated upon this low rate of taxation, an immediate result, as it is, to a large extent, of the emphatic popular protest at the polls last autumn against public extravagance and legislation inimical to the State's prosperity. For years the tax-burdened farmer has appealed in vain for relief to the Legislature, and at last he has received it in the substantial form of the lowest tax rate for thirty-six years. The event is certainly one for congratulation and foreshadows the time in the near future when, by an economical administration of the government, no direct taxes whatever will be required for State purposes. It is to be regretted that more toward the accomplishment of this end was not done at the recent session of the Legislature, owing to the failure of the Senate to pass certain equitable measures of indirect taxation which had passed the Assembly.

What has been done, however, remains as the substantial fact and stands forth conspicuous as the crowning act of the shortest legislative session in seventeen years. Professions for economy in public administration are easily made, but prompt performance is more difficult. It is a gratifying feature of this accomplishment that it is the quick and faithful response of the people's representatives to the demands and expectations of the public, as manifested in the popular verdict of last autumn."

May 22.

Veto of

Assembly bill entitled "An act to amend section 2 and section 9 of chapter 325 of the Laws of 1863, as amended by chapter 213 of the Laws of 1875, entitled 'An act relative to the care and education of deaf-mutes.'"

Assembly bill entitled "An act authorizing the board of claims to hear, audit and determine the claim or claims of Richard Humphrey, Frank Argus, John Argus, John Esser, John S. Hertel, A. A. Justin, W. C. Hubbard, William McIntosh, Caleb J. Coatsworth, Daniel E. Horton, Carroll Brothers, A. Ralph Clark, Anna M. Malcolm, Alexander Reed, and the Laycock Lumber company and William Haven, of Buffalo, New York, and B. and J. Carpenter, of Lockport, New York, and to make an award thereon."

Senate bill entitled "An act to amend sections 2991 and 2996 of the Code of Civil Procedure, relating to jurors in Justices Court."

Senate bill entitled "An act to amend chapter 53 of the Laws of 1888, entitled 'An act to provide for the destruction of animals affected with the disease known as glanders.'"

Senate bill entitled "An act to authorize and empower the board of claims to hear, audit and determine the claim of Weed, Parsons & Company against the State, and to make an award thereon."

Senate bill entitled "An act to amend section 830 of the Code of Civil Procedure, relative to evidence."

"The foregoing six bills are either defectively drawn or contain provisions which are of doubtful propriety. I have deemed it wise that before their enactment an opportunity for amendment and correction should be afforded, and for that purpose, that they should receive further consideration at the hands of another Legislature, and for these reasons they are not approved at this time."

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